

CITY OF VINELAND, NJ

RESOLUTION NO. 2023- 464

RESOLUTION APPOINTING INFINITI ENERGY LLC HAMILTON, NEW JERSEY AS REDEVELOPER AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY COUNCIL OF THE CITY OF VINELAND AS THE REDEVELOPMENT ENTITY AND INFINITI ENERGY LLC AS THE REDEVELOPER FOR A PORTION OF THE MUNICIPAL LANDFILL REDEVELOPMENT AREA.

WHEREAS, pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. the City Council of the City of Vineland adopted Resolution 2022-154 requesting the Planning Board to undertake a preliminary investigation as to whether Block 5501 Lot 1 (Property) meets the criteria as an area in need of redevelopment, said Property being a properly closed and capped municipal landfill with small portions used for composting; and

WHEREAS, the Planning Board adopted Resolution 6508 recommending City Council favorably consider the Property as an area in need of redevelopment and City Council adopted Resolution 2022-236 adopting the findings of the Planning Board and declared the Property a Non-Condemnation Redevelopment Area further known as the Municipal Landfill Non-Condemnation Redevelopment Area (Redevelopment Area); and

WHEREAS, on June 13, 2023, City Council passed a motion to request the Planning Board prepare a redevelopment plan for the Redevelopment Area in accordance with N.J.S.A. 40A:12A-7 and after taking the testimony and reviewing the redevelopment plan prepared by Kathleen Hicks, P.P., AICP, the Planning Board endorsed the Redevelopment Plan to utilize the Property as a solar array which would advance the City Master Plan, support preservation of farmland and open space by supporting the utilization of compromised land for the development of solar fields which in turn would advance federal, State and local initiatives to address the negative impacts of climate change and provide clean energy to the area; and

WHEREAS, City Council adopted Ordinance 2023-47 adopting the Redevelopment Plan consistent with Planning Board Resolution 6581; and

WHEREAS, on August 26, 2021 Infiniti Energy LLC, Hamilton, New Jersey has submitted an application to the Board of Public Utilities for certification for eligibility to generate Transition Renewable Energy Certificates (TRECS) and proposed a 14.9962 MWdc grid supply solar farm on the Property and has submitted a proposal to the City to be named Redeveloper for the Property; and

WHEREAS, Infiniti proposes to lease the Property at a rate of \$20,000.00 per MWdc monthly with an additional PILOT payment in the amount of \$5,000.00 monthly per MWdc, a PPA for a period of twenty (20) years with an energy purchase rate to the City in the amount of \$.02 per KWH, zero percent escalation of KWH rate for the full 20 year period, a \$4,000,000.00 utility upgrade allowance payable upon request for progress payments for infrastructure upgrades

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required for the project. and the City shall have full capacity and transmission savings over the full term of the lease period of 20 years; and

WHEREAS, upon the recommendations and information provided by the Director of the Municipal Utilities, City Council finds that Infiniti has the financial ability, experience and expertise to redevelop the Property within a reasonable period of time as set forth in the attached Redevelopment Agreement and further finding the financial benefits and meeting the purposes of the redevelopment plan are in the best interest of the City.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that City Council of the City of Vineland as the Redevelopment Entity appoints Infiniti Energy LLC, Hamilton, New Jersey as the Redeveloper for a portion of the Municipal Landfill Non-Condemnation Redevelopment Area totaling approximately 37.7 acres of land more or less in accordance with N.J.S.A. 40A:12-8, subject to the execution of a Redevelopment and Lease Agreement in the form and substance attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that Council President shall execute the Agreement on behalf of the Redevelopment Entity.

Adopted:

President of Council

ATTEST:

City Clerk

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF VINELAND, NEW JERSEY,

as the Redevelopment Entity

and

INFINITI ENERGY, LLC,

as the Redeveloper

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THIS AGREEMENT (the “**Agreement**”), dated as of October 2023 by and between the **CITY OF VINELAND**, a municipal corporation of the State of New Jersey, with offices at 640 East Wood Street, Vineland, New Jersey 08360, acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Redevelopment Law**”) and its respective successors and assigns (the “**City**”), and **INFINITI ENERGY, LLC**, a New Jersey limited liability company, with offices located at 300 American Metro Blvd East, Hamilton, New Jersey and its successors and assigns (the “**Redeveloper**” and, together with the City, the “**Parties**”).

RECITALS:

WHEREAS, the Redevelopment Law provides a process for municipalities to participate in the redevelopment and improvement of areas in need of rehabilitation; and

WHEREAS, in full compliance with all applicable provisions of the Redevelopment Law, the City Council adopted Resolution 2022-236 designating Block 5501 Lot 1 as an “area in need of redevelopment”; and

WHEREAS, in full accordance with all applicable provisions of the Redevelopment Law, the City duly adopted the Municipal Landfill Non-Condemnation Redevelopment Plan, as amended (collectively, the “**Redevelopment Plan**”); and

WHEREAS, the Redeveloper has executed a Letter of Intent (LOI) dated June 1, 2023 for lease of a portion of 1271 South Mill Road, Block 5501 Lot 1 consisting of approximately 37 acres of land, formerly known as the Municipal Landfill as more fully described in Exhibit A (the Property) to be utilized for the construction, installation and operation of an approximately 15 MWdc ground-mounted solar powered electric generation facility (Project) for which the Redeveloper shall pay rent and a PILOT as more fully described herein; and

WHEREAS, in furtherance of the redevelopment of the Property, it is the desire of the parties to enter into this Agreement; and

WHEREAS, on _____ the City Council duly adopted a resolution authorizing the execution and delivery of this Agreement and designating the Redeveloper as the redeveloper of the Property, subject to the execution and delivery of this Agreement by the Redeveloper.

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind their successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

SECTION 1.1 - Definitions. Except as expressly provided herein to the contrary, all capitalized terms used in this Agreement shall have the following meanings:

“Affiliate” means with respect to any Person, including without limitation, the Redeveloper, any other Person or entity directly or indirectly controlling or controlled by, or under direct or indirect common Control with such Person.

“Agreement” means this Agreement, as the same may be amended or supplemented from time to time in accordance with its terms.

“Applicable Law” means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, including therein the State of New Jersey Board of Public Utilities (BPU) and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project Area, the Project Improvements, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Agreement, including without limitation, the Municipal Land Use Law and the Redevelopment Law.

“City” has the meaning given in the Recitals.

“City Authorized Representative” means the Mayor, Clerk, Chief Financial Officer, Construction Code Official or any such other officer, agent, representative or employee of the City as the Mayor may reasonably determine.

“City Code” shall mean the Code of the City of Vineland, setting forth and including the rules, regulations, resolutions and ordinances of the City, as required to be maintained by the City in accordance with Applicable Law.

“City Council” means the governing body of the City.

“City Covenants” shall have the meaning given in Section 3.2 hereof.

“City Enforcement Action” shall have the meaning given in Section 9.3(a) hereof.

“City Event of Default” means, with respect to the City, an Event of Default, as such term is defined in Section 9.1 hereof.

“City Indemnified Parties” means the City and its officers, elected officials, employees, agents and consultants.

“Certificate of Completion” means a certificate or certificates certifying that: (a) the Project Improvements or any phase thereof as may be applicable have been Completed in accordance with the Governmental Approvals; (b) other facilities as required by any Governmental Approvals to achieve Substantial Completion and commence occupancy of a particular phase or portion of the Project Improvements has been acquired, constructed or improved in accordance with the Governmental Approvals and all costs and expenses incurred in connection therewith have been paid or adequate security otherwise posted; and (c) a Certificate of Occupancy, if required, and any other permissions required, if any, of governmental authorities or agencies for the occupancy and use of all portions of the Project Improvements or Completed phase for the purposes contemplated by this Agreement have been obtained or Redeveloper has performed its duties and obligations under this Agreement with respect to all or a portion of the Project Improvements and certified that the Project Improvements, or any portion thereof, have been Completed. The City recognizes and consents to the fact that the Project and the Project Improvements may be developed and constructed in phases and that the Redeveloper shall be entitled to a Certificate of Completion for any phase of the Project or Project Improvements that has been Completed in accordance with the Government Approvals including all final approvals and full certification by the BPU for the operation of the Project as more fully set forth in Order of the BPU In the Matter of the Implementation of L 2012, C. 24, The Solar Act of 2012, Etc., Docket No. E012090832V, QO19010068 and Q)21081101 (BPU Order).

“Certificate of Occupancy” means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project Improvements upon completion of all or a portion of the respective Project Improvements.

“Claim(s)” means any pending or threatened claim, demand, notice, allegation, order, directive, suit, action, cause of action, judgment, lien, demand for arbitration, proceeding, or investigation by any Person.

“Commencement of Construction” means the commencement of the Development and Construction Period as specified in the Letter of Intent referenced herein and attached hereto Exhibit B. More specifically defined as the end of the Due Diligence Period..

“Completion” means with respect to the Project Improvements, or any portion thereof, that (a) all work related to the Project Improvements, or a portion thereof, or any other work or actions to which such term is applied has been Substantially Completed, acquired and/or installed in accordance with this Agreement and in compliance with Applicable Laws so that (i) the Project Improvements, or any portion thereof that have been Substantially Completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Agreement, or any directives or Orders of the BPU, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been Substantially Completed, all as evidenced by the issuance of a Certificate of Occupancy, if required; (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project Improvements, or any portion thereof that have been Substantially Completed, or such other work or action to which such term is applied are in full force and effect; and (c) such “Substantial Completion” has been evidenced by a written notice provided by the Redeveloper (with respect to the Project Improvements, or any portion thereof), which determination is reasonably acceptable to the City.

“Control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Effective Date” means the date entered on the first page hereof.

“Environmental Law or Environmental Laws” means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of hazardous substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. sect. 6901, et. seq.), the Clean Water Act (33 U.S.C. sect. 1251, et. seq.); the New Jersey Spill Compensation and Control Act (the “Spill Act”) (N.J.S.A. 58:10-23.11, et. seq.); the Industrial Site Recovery Act, as

amended (“ISRA”) (N.J.S.A. 13:IK-6, et. seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et. seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et. seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et. seq.); and the rules and regulations promulgated thereunder.

“Event of Default” means the occurrence of any Redeveloper Event of Default or City Event of Default, as the case may be.

“Force Majeure” is defined in Section 9.2 hereof.

“Foreclosure” is defined in Section 10.4 hereof.

“Governmental Approvals” means all necessary reviews, consents, permits, licenses, leases, easements, grants or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity, including without limitation the BPU, City and the planning and/or zoning board, if applicable, and including approvals for all utility relocations, if any, and services required by the Project.

“Governmental Authority” means any federal, state, county or local agency, department, commission, authority, court or tribunal, and any successor thereto, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any public utility, with authority over the Project Improvements or the Project Area.

“Hazardous Substance or Hazardous Materials” means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any Environmental Law.

“Municipal Land Use Law” means N.J.S.A. 40:55D-1 et seq., as amended and supplemented.

“Party(ies)” has the meaning given in the Recitals.

“Permitted Lease and Power Purchase Economics” means a lease and power purchase agreement by and between the City and Redeveloper for the Project Area. The Lease shall be for a term of one year from the date of this Agreement for Development and Construction with two (2) six (6) month extensions at Redeveloper’s option. However, should Redeveloper generation system be operational and City is ready to receive energy from Redeveloper prior to the expiration of the Development and Construction Period, the Development and Construction Period shall end and the Operation Period shall commence. The operation period shall be twenty (20) years with one (1) five (5) year extension at Redeveloper’s and City’s mutual agreement and a six (6) month decommissioning period. During the Development and Construction period, no rent shall be due. Commencing no later than 24 months or at the commencement of the Operation Period and for

every year thereafter for the duration of the Lease Term monthly payments shall be \$20,000.00 per Megawatt for 15 MWdc but in no event shall payments be less than \$300,000.00 per annum regardless of generation. In addition thereto, Redeveloper shall pay a PILOT in the amount of \$5,000.00 per Megawatt for 15 MWdc calculated monthly but payable annually in arrears but in no event shall the annual payment be less than \$75,000.00. During the first six (6) months of the Decommissioning period, no payment shall be due provided no generation is occurring. Thereafter, there will be payment in the amount of \$10,000.00 per month until decommissioning is completed and all equipment and materials have been removed. A bond shall secure the cost of Decommissioning and will be payable to the City. In addition thereto there shall be a power purchase agreement wherein the energy purchase rate to the City shall be \$.02 per KWH with a zero percent escalation of KWH rate for the term of the lease. Redeveloper shall also pay \$4,000,000.00 to the City for the utility upgrade allowance to cover the cost of infrastructure upgrades for the project payable upon request of the City as required. The City shall have full capacity and transmission savings over the term of the lease.

“Permitted Transfers” is defined in Section 6.2 hereof.

“Person” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, corporation, trust, unincorporated association, urban renewal entity, institution, public or Governmental Authority, or any other entity.

“Progress Meeting(s)” is defined in Section 5.1 hereof.

“Project” means the Governmental Approvals and the Project Improvements.

“Project Area” means the Property.

“Project Costs” means all costs of the Project Improvements.

“Project Improvements” means the construction and operation of a 14.9962 MWde (also referred to as 15 MWde) ground-mounted solar powered electric generation facility on a 37.7 acre portion of a closed municipal landfill, also known as the Municipal Landfill Non-Condensation Redevelopment Area, in compliance with the BPU Order and such further Orders as may be handed down. The Redeveloper shall generate Transition Renewable Energy Certificates (TREC’s) and shall maintain the existing closed landfill in compliance with all New Jersey Department of Environmental Protection Agency (NJDEP) laws or rules. The Redeveloper shall further comply with the Municipal Landfill Non-Condensation Redevelopment Plan dated June 2023. The year One production shall be 19.5M kWh and a 20 year production of 371.2MkW. The Redeveloper shall be responsible for all costs for permits, approvals, development, construction, operation and

decommissioning of the Project Improvements. Redeveloper shall be responsible for any and all costs and fees, including the cost for a Licensed Site Remediation Professional (LSRP) for all NJDEP compliance requirements. The parties shall execute a Lease containing the terms set forth herein and such further terms as are agreed upon. "Project Improvements" shall also include any improvements to be undertaken by third-party utility providers (i.e. electric, water, cable, telephone, etc.).

“Project Schedule” means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in Section 4.7 hereof.

“Property” has the meaning given in the Recitals.

“Redeveloper” has the meaning given in the Recitals.

“Redevelopment Area” has the meaning given in the Recitals.

“Redeveloper Covenants” is defined in Section 3.1 hereof.

“Redeveloper Enforcement Action” is defined in Section 9.4(a) hereof.

“Redeveloper Event of Default” means, with respect to the Redeveloper, an Event of Default as defined in Section 9.1 hereof.

“Redevelopment Law” has the meaning given in the Recitals.

“Redevelopment Plan” has the meaning given in the Recitals.

“Section” means a section or subsection of this Agreement.

“Section 8.1(a) Indemnified Claim (8.1)(a)” is defined in Section 8.1(a) hereof.

“State” means the State of New Jersey.

“Substantial Completion” means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of “Completion” have been satisfied, with the exception of certain portions of the work relating to the subject Project Improvements as long as the Redeveloper has prepared and delivered to the City a "punch list" of items requiring completion or correction in order for the

Redeveloper to fully comply with the terms of this Agreement with respect to the subject Project Improvements, (b) "punch list" items have been reasonably agreed to by the City, and (c) such "punch list" items are capable of being Completed within six (6) months of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion. Substantial Completion shall be evidenced by issuance of a Temporary Certificate of Occupancy for the Project Improvements, or any portion thereof that has been Substantially Completed.

"Temporary Certificate of Occupancy" means a temporary Certificate of Occupancy issued with respect to the Project Improvements, or a portion thereof upon Substantial Completion of the Project Improvements or such portion thereof.

"Term" means that period of time from the Effective Date of this Agreement until the City issues the final Certificate of Completion for the Project Improvements or until the earlier termination of the Agreement in accordance with the terms hereof.

"Transfer" is defined in Section 6.2 hereof.

"Uniform Construction Code or UCC" is defined in Section 4.3(d) hereof.

"Utilities" means water, sanitary sewer and storm water provisions, natural gas, electricity, and voice and data transmission facilities.

"Written Notice and Opportunity to Cure" is defined in Section 9.1(a) hereof.

SECTION 1.2 - Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing Persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural Persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) Each right of the City to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the City official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a timely manner. Upon request of the Redeveloper, the City shall inform the Redeveloper of all officials with the required authority.

(g) Unless otherwise indicated, any “fees and expenses” shall be required to be customary and reasonable.

ARTICLE 2

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 2.1 - Representations and Warranties by Redeveloper. In addition to, but not limited by, any and all other representations and warranties of the Redeveloper contained in this Agreement, the Redeveloper hereby represents and warrants as of the date of this Agreement the following to the City for the purpose of inducing City to enter into this Agreement and to consummate the transactions contemplated hereby:

(a) The Redeveloper is a limited liability company of the State of New Jersey, is qualified to do business and in good standing under the laws of the State of New Jersey and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a Party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(c) This Agreement is duly executed by the Redeveloper and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which Redeveloper is a Party.

(d) There is no pending litigation that would prevent the Redeveloper from performing its duties and obligations hereunder or have a material adverse effect on the Redeveloper's financial condition.

(e) There are no suits or legal proceedings of any nature pending against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper or its members.

(f) To Redeveloper's knowledge, all materials and documentation submitted by the Redeveloper and its agents to the City and its agents were, at the time of such submission, and as of the Effective Date, except to the extent such materials were updated or superseded by subsequent submission to the City, materially accurate, and the Redeveloper shall continue to inform the City of any material changes in the documentation submitted.

(g) The Redeveloper shall be the Tenant of the Project Area.

(h) The Redeveloper acknowledges that the cost and financing of the Project is the sole responsibility of the Redeveloper.

(i) Redeveloper acknowledges that neither the City nor any of its agents, representatives, employees, officers or officials have made any representations or warranties, expressed or implied, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Redeveloper has not relied on any representations or warranties, except those representations, if any, expressly set forth in this Agreement, as to (i) the potential qualification of any of its property, including without limitation, the Project Area or the Project Improvements for any and all benefits conferred by federal, state or municipal laws; (ii) the compliance of any of its property, including without limitation, the Project Area or the Project Improvements in its current or future state, with applicable zoning ordinances and the ability to obtain a variance in respect of any such property's non-compliance, if any, with said zoning ordinances; (iii) the current or future use of any of its property, including without limitation, the Project Area or the Project Improvements, including but not limited to the use of any such property for the construction and operation of a solar-powered generating facility of such size as specified herein; (iv) the physical condition, including, but not limited to, the environmental condition, of any of its property, including without limitation, the Project Area or the Project Improvements; and (v) the ability to obtain federal, state, county or municipal approvals for construction or alteration of any improvement on any of its property, including without limitation, the Project Area or the Project Improvements.

(j) The Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction(s) contemplated by this Agreement in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk. Redeveloper acknowledges that this paragraph was a negotiated part of this Agreement

and serves as an essential component of consideration for the same. The Redeveloper has additionally relied upon the City's representations as set forth in this Agreement.

SECTION 2.2 - Representations and Warranties by City. In addition to, but not limited by, any and all other representations and warranties of the City contained in this Agreement, the City hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby:

(a) The City has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the City is or shall be a Party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Agreement is duly executed by the City and is valid and legally binding upon the City and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the City is a Party.

(c) The City has acted pursuant to the Redevelopment Law and all other applicable statutes in designating the Redevelopment Area and adopting the Redevelopment Plan.

(d) There is no pending, or to the best of the City's knowledge, threatened litigation that would prevent the City from performing its duties and obligations hereunder.

(e) The City shall require off-site infrastructure improvements.

SECTION 2.3 - Mutual Representation. The City and the Redeveloper agree that the Project Area and the Project Improvements shall be governed by this Agreement and the Redevelopment Plan.

ARTICLE 3

GENERAL COVENANTS

SECTION 3.1 - Redeveloper Covenants. In addition to, but not limited by, any and all other covenants and agreements of the Redeveloper contained in this Agreement, the Redeveloper hereby covenants and agrees to the following (collectively, “**Redeveloper Covenants**”):

(a) The Redeveloper shall proceed with continuity of purpose and shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under Applicable Laws.

(b) The Redeveloper shall (i) use diligent efforts to obtain Financing, if necessary, for the Project Improvements, and (ii) shall begin and complete construction of the Project and the Project Improvements in accordance with the Project Schedule. All activities performed under this Agreement shall be performed in a good and workmanlike manner. For purposes of this Agreement,

(c) The Redeveloper shall construct the Project Improvements substantially in accordance with this Agreement, the Redevelopment Law, the Redevelopment Plan, the Governmental Approvals and all other Applicable Law.

(d) The Redeveloper shall complete the Project Improvements, or cause same to be Completed, in accordance with the Project Schedule at its sole cost and expense.

(e) The Redeveloper shall not discriminate against or segregate any Person, or group of Persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex or affectional preference in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.

(f) The Redeveloper shall immediately notify the City of any material change in its financial condition from the information provided to the City by the Redeveloper that affects the Redeveloper’s financial capability to develop, finance and construct the Project Improvements.

(g) The Redeveloper shall not use the Project Area, Project Improvements, or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan, this Agreement and the Governmental Approvals.

(h) The Redeveloper shall not use the Project Area, Project Improvements, or any part thereof as collateral for any reason.

(i) The Redeveloper shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Project Area and/or the Project Improvements before the same shall become in default.

(j) The Redeveloper shall not enter into any lease of the Project Area, Project Improvements, or any part thereof, other than a Permitted Lease.

SECTION 3.2 - City Covenants. In addition to, but not limited by, any and all other covenants and agreements of the City contained in this Agreement, the City hereby covenants and agrees to the following for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby (collectively, the “**City Covenants**”):

(a) The Redeveloper is hereby designated as the sole redeveloper of the Project Area and shall have the exclusive right to construct the Project Improvements in accordance with the provisions of the Agreement.

(b) Upon the Completion of the Project Improvements, or any approved phase thereof, and upon issuance of a Certificate of Completion therefor in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Project Area was determined to be in need of rehabilitation shall be deemed to no longer exist with respect to the Project Area and the conditions and requirements of the Redevelopment Law, including without limitation, N.J.S.A. 40A:12A-9, shall be deemed to have been satisfied with respect to the Project Improvements.

(c) City agrees to reasonably cooperate with the Redeveloper to further amend the standards contained in the Redevelopment Plan upon request by Redeveloper to accommodate reasonable variations of the Project consistent with the intent of the Redevelopment Plan. City will not amend the Redevelopment Plan or adopt other ordinances or regulations that would be inconsistent with the development of the Project in accordance with this Agreement and the Redevelopment Plan and/or the rights or Redeveloper under this Agreement.

(d) City agrees not to withhold building permits and/or certificates of occupancy for Project Improvements provided Redeveloper is in substantial compliance with the applicable building codes and development approvals, including all conditions identified therein.

(e) City agrees to cooperate with Redeveloper in connection with any and all Governmental Approvals and permits required to construct the Project, including but not limited to execution of such consents as may be required and/or the review of documents in a timely manner. In particular, the City agrees to execute the application for permit(s) from NJBPU, any federal regulatory agency NJDEP or any such other governmental agency provided Redeveloper pays for, and/or indemnifies the City for, all costs related thereto.

SECTION 3.3 - Effect and Duration of Redeveloper Covenants. Except as otherwise set forth herein, it is intended and agreed that the agreements and covenants set forth in Section 3.1 and those elsewhere in this Agreement shall be covenants running with the Project Area until completion of the Project Improvements have been Substantially Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the City and the Redeveloper against each other, their successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project Improvements or any part thereof provided, however, that such covenants shall expire and no longer be enforceable, other than those that shall expressly survive the termination of this Agreement as set forth herein, upon the issuance of the final Certificate(s) of Completion for the Project Improvements.

ARTICLE 4

THE PROJECT

SECTION 4.1 - Designation of Redeveloper.

(a) Exclusive Redeveloper. The Redeveloper, subject to the provisions hereof, is the designated Redeveloper and shall have the exclusive right to carry out the Project. For the Term (as hereinafter defined) of this Agreement, the City shall not have the right to designate any Person or entity other than the Redeveloper as a redeveloper within the Project Area nor enter into an Agreement pursuant to Section 7(f) of the Redevelopment Law with such Person or entity. This Agreement shall become effective upon the Effective Date and shall remain in full force and effect from such date until the Project Improvements have been Completed, as evidenced by the issuance of the applicable final Certificate of Completion for the final component of the Project, or until its earlier termination/voidance in accordance with the terms hereof (the “**Term**”).

(b) Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, construction and operation of the Project Improvements, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project Improvements, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project Improvements and all aspects of the funding of the Project Improvements, including interim and permanent financing, all at the sole cost and liability of the Redeveloper.

SECTION 4.2 - Project Area. The Project Area consists of the surface, subsurface and airspace above the real property described in the definition thereof and upon which the Project Improvements shall be constructed and any rights of way immediately adjacent thereto. The Project Area is further identified in the attached Exhibit A

SECTION 4.3 - Project Improvements.

(a) The Project Improvements shall be constructed consistent with the Redevelopment Plan, this Agreement, the Governmental Approvals and all Applicable Laws.

(b) The Project Improvements shall be utilized solely for the purposes more fully set forth in the Redevelopment Plan and this Agreement.

(c) The Redeveloper shall provide for the timely development of the Project Improvements in conformance with the Project Schedule and will cooperate with the City to avoid unreasonable interference with the operation of any existing Utilities. Redeveloper agrees to provide all performance and maintenance bonds and inspection fees as may be required by the Governmental Approvals.

(d) Without limitation, all work on the Project Improvements shall be performed in a good and workmanlike manner, using, where specified, the materials called for under the Governmental Approvals being of such quality as may be specifically required by such Governmental Approvals. All construction shall be in accordance with the Uniform Construction Code, codified at N.J.A.C. 52:3-1 et seq. (the “UCC”).

SECTION 4.4 - Relocation of Utilities. The Redeveloper acknowledges that local utility providers may have certain rights with respect to the Project Area and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility, at no cost to the City, to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these Utilities and improvements and easements therefor, in order to complete construction of the Project Improvements, as provided by this Agreement, provided that the City shall, at no cost to the City, provide any appropriate order to accomplish such relocation and assist the Redeveloper in dealing with utilities providers, to the extent permitted by Applicable Law and shall, further, provide access to and connection to all such Utilities under City Control.

SECTION 4.5 - Restoration of Project Improvements. The City agrees that the Redeveloper shall have the right to restore to its original condition any Project Improvement that may be damaged or destroyed either prior to or after the issuance of a Certificate of Completion, regardless of any change in the City's rules, regulations or ordinances. Any such restoration must be consistent with this Agreement, the Governmental Approvals and the Redevelopment Plan.

SECTION 4.6 - Liens. The Redeveloper shall indemnify and hold the City harmless from all liens, or claims or rights to enforce liens, against the Project Area, or the improvements arising out of any

activities or work performed by (or on behalf of) the Redeveloper or labor or materials furnished to the Redeveloper under this Agreement. Without limitation, in all events, not less than ten (10) days prior to the date on which the Redeveloper will be divested of any interest in the Project Area as a result of any such lien, the Redeveloper shall cause any such lien to be lifted and removed, by bonding or other action and shall provide the City proof of same.

SECTION 4.7 - Project Schedule.

(a) The “Project Schedule” shall be as follows:

(i) Redeveloper shall commence the Development and Construction Period upon the execution of this Agreement and shall complete construction n within one (1) year with three (3) additional six (6) month extensions at Redeveloper’s option provided Redeveloper is taking all reasonable steps necessary to conclude the Development and Construction Period as expeditiously as possible.

(ii) Redeveloper shall obtain all certifications and permits to operate and shall commence operation of a 15MWdc ground-mounted solar-powered electric generation facility within two years of the execution of this Agreement.

(b) If Redeveloper fails to meet a completion date set forth in the Project Schedule or determines that it will fail to meet a completion date, Redeveloper shall promptly provide notice to the City stating: (i) the reason for the failure to complete the applicable task; (ii) Redeveloper's schedule for completing such task; and (iii) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant completion dates. This Section shall in no way limit the right of the City under Article 9 or other applicable provisions of this Agreement, or the rights of the Redeveloper under Section 9.2, or other applicable provisions of this Agreement.

SECTION 4.8 - Environmental Compliance and Indemnification.

(a) As between the Redeveloper and the City, the Redeveloper agrees and specifically assumes any and all responsibility for the investigation and remediation of all environmental conditions, whether known or unknown, on, under or migrating from the Project Area or anything affected off-site (but not migrating to the Project Area), as may be required by applicable Environmental Laws, and the Redeveloper shall bear all costs for such investigation and remediation of the site. The Redeveloper shall use reasonable efforts to obtain all environmental approvals that may be required for the remediation of the Project Area. Any and all environmental costs shall be the sole responsibility of the Redeveloper. Environmental compliance shall include all compliance requirements for the landfill closure obligations with the NJDEP. Redeveloper shall be responsible for the maintenance of the landfill cap and assure that damage, if any, is immediately repaired including any areas of erosion. Redeveloper acknowledges there are nine (9) groundwater monitoring wells, 49 perimeter wells and 45 large air vents and shall provide monitoring and reporting as required. The Redeveloper shall also be responsible for air testing for the perimeter

and large vents on the cap as required. Redeveloper shall take all actions recommended as approved by NJDEP.

(b) Without limitation on any obligation to defend and indemnify pursuant to this Agreement, and without limitation to such obligation which the Redeveloper may have as a matter of law, and unless otherwise caused by the City, the Redeveloper shall indemnify, defend, release and hold the City and its officials and agents harmless against (i) all Claims or alleged Claims and response costs and fines and penalties against the City and its officials and agents or the Redeveloper by any Governmental Authority or third party due to the presence of Hazardous Materials on or within the Project Area, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Project Area, whether prior to or after the Effective Date, (ii) all Claims or alleged Claims against the City and its officials and agents by any Governmental Authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Materials on or within the Project Area or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whether prior to or after the Effective Date, and (iii) all Claims or alleged Claims of bodily injury or property damage asserted against the City and its officials and agents by third Parties due to the presence of Hazardous Materials which become present on or within the Project Area, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Project Area whether prior to or after the Effective Date. This indemnity shall survive termination of this Agreement. Nothing herein shall require indemnification of the City, its officials and agents with respect to any matter resulting from the intentional or willful acts or omissions of any of the indemnified parties.

SECTION 4.9 - Traffic During Construction. The Redeveloper and the City agree that the direction and flow of construction traffic in and around the Project Area is an issue to be addressed during the construction of the Project Improvements. The Redeveloper will use reasonable efforts to minimize the traffic effects of the construction of the Project Improvements upon the surrounding neighborhoods, in consultation with the City of Vineland Engineering Department.

SECTION 4.10 - Neighborhood Impacts. The Redeveloper acknowledges that the construction of the Project Improvements may have certain impacts on the neighborhoods in the vicinity of the Project Area. Although it is anticipated that the Project Improvements will provide many positive effects on the community, it is also recognized that it may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, the Redeveloper shall take all reasonable steps in order to minimize any negative effects that construction of the Project may produce. Such steps shall include, but shall not be construed to be limited to:

- (a) Provisions to ensure minimal interruptions of utility service;

(b) To the extent reasonably practicable, identification of the least intrusive (to the surrounding neighborhoods) access routes for delivery of construction materials, equipment and personnel;

(c) To the extent reasonably practicable, identification of the least intrusive (to the surrounding neighborhoods) staging area for stockpiling of construction materials, storage of equipment and parking of employee vehicles.

SECTION 4.11 - Cooperation. The Parties shall fully cooperate with each other as necessary to carry out the intent of this Agreement, including entering into additional agreements that may be required, provided however, that such actions and/or agreements shall not result in a material increase or decrease in the City's or the Redeveloper's respective obligations hereunder.

SECTION 4.12 – Certificate of Occupancy. Upon completion of the construction of any building(s) or unit(s) that are included as part of the Project Improvements, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for that building or unit. The Redeveloper shall take all actions legally required for issuance of a Certificate of Occupancy and the City shall process any applications for same in accordance with the UCC. Upon satisfaction of the requirements set forth in the definition of Substantial Completion, the Redeveloper may apply to the appropriate governmental officer or body for issuance of a Temporary Certificate of Occupancy which shall be effective until such time as a permanent Certificate of Occupancy is received. Notwithstanding the issuance of the Temporary Certificate of Occupancy, the Redeveloper shall not be deemed to have Completed the Project Improvements, or any phase or portion thereof, as applicable, until a Certificate(s) of Completion has been issued. As such, until such Certificate(s) of Completion is issued, the provisions of this Agreement remain in full force and effect.

SECTION 4.13 - Certificate of Completion. The completion of the Project Improvements or any Completed phase thereof shall be evidenced by a Certificate of Completion. The City shall not unreasonably withhold condition or delay the delivery of a Certificate(s) of Completion.

If the City determines that the Redeveloper is not entitled to a Certificate(s) of Completion, the City shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the City refused or failed to furnish a Certificate(s) of Completion. If the reason for the refusal is confined to the immediate availability of specific minor finish items, the City will issue its Certificate of Completion upon the posting of a bond, to the extent not already covered under any bond(s) already posted and in effect in accordance with the Municipal Land Use Law, or other reasonably satisfactory security, by the Redeveloper with the City in an amount representing one hundred twenty five percent (125%) of the value of the work not yet Completed, to the extent of the value of such work.

ARTICLE 5

PROJECT OVERSIGHT

SECTION 5.1 - Progress Meetings. The Parties shall attend and participate in Progress Meetings to report on the status of the Project Improvements and to review the progress under the Project Schedule. Progress Meetings shall commence upon execution of this Agreement and shall occur periodically, but not more often than every three months, upon reasonable request of City or the Redeveloper. Progress Meetings shall be held at the Project Area or other convenient location in the City or be held by conference call. The agenda for the Progress Meetings shall include, but not be limited to, a status report with regard to Governmental Approval submissions and approvals, construction of Project Improvements, compliance with the Governmental Approvals and the Redevelopment Plan and activities concerning marketing, sales and leasing.

SECTION 5.2 - Access to Project Area. Upon reasonable prior notice and accompaniment by a representative of the Redeveloper (except in the event of an emergency), the City Authorized Representatives shall have the right to enter the Project Area to inspect the Project Improvements and any and all work in progress, provided, however, that City acknowledges hereby that the Project Area will be an active construction site and the Redeveloper shall not be liable or responsible to the City or the City Authorized Representatives for injury to Person or Property sustained in connection with such inspections except to the extent that the Redeveloper violates the standard of due care owed to invitees. Such entrance shall be for informational purposes and shall not relieve the Redeveloper from its obligation to implement the Project in accordance with this Agreement. In no event shall the City's inspection of the Project Improvements be deemed acceptance of the work or be deemed to waive any right the City has under this Agreement. At any time required by any governmental inspection agency including the NJDEP, Redeveloper shall provide access to the Project Area and further allow any and all testing necessary in accordance with any permit requirements.

SECTION 5.3 - Submissions and Presentations to the City. Except as may otherwise be set forth in this Agreement, the Redeveloper shall be required to provide the City with a copy of each and every application for Governmental Approvals submitted to Governmental Authorities at the same time the Redeveloper submits those applications to such Governmental Authorities.

ARTICLE 6

TRANSFERS

SECTION 6.1 - Prohibition Against Transfers. The Redeveloper recognizes that, in view of (a) the importance of the redevelopment of the Project Area to the general welfare of the community; (b) the assistance to be made available by law and by the City on the conditions stated herein, for the purpose of making such redevelopment possible; and (c) the fact that a change in Control of the Redeveloper, or any other act or transaction involving or resulting in a change in Control of the

Redeveloper represents a possible Transfer or disposition of the property interest then owned by the Redeveloper, including the Redeveloper's right to redevelop the Project Area; the qualifications and identity of the Redeveloper and its principals are of particular concern to the City, no voluntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under this Agreement except as expressly permitted herein.

SECTION 6.2 - Redeveloper Covenants. As to Transfers, the Redeveloper covenants and agrees that:

(a) Except for Permitted Transfers, prior to the issuance of a Certificate of Completion(s) the Redeveloper shall not, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed: (i) effect or permit any change, directly or indirectly, in the Control of the Redeveloper, (ii) assign or attempt to assign this Agreement or any rights herein or in the Project Area or its interest in the Project Improvements, or (iii) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project Area or its interest in the Project Improvements (collectively a “**Transfer**”), provided, however, that these restrictions shall not apply as to any portion of the Project Area pursuant to which a Certificate(s) of Completion has been issued.

(b) The following Transfers are exceptions to the prohibition set forth in the previous subparagraph and, such Transfers shall not require prior approval by the City (“**Permitted Transfer**”), the written consent of the City to such transactions being deemed given hereby provided written notice of same is given to the City: (i) utility and other development easements; (ii) an assignment and/or Transfer of all or part of the Redeveloper's interest in this Agreement and/or the Project Area, or any portion thereof, to an Affiliate or other entity which is Controlled by Infiniti Energy LLC; (ii) any contract, agreement or assignment with respect to any of the foregoing transactions; (iii) an assignment and/or Transfer of any portion of the Redeveloper's interest in this Agreement and/or the Project Area to an entity which is, or whose Affiliate is a publicly traded company in the business of operating a solar electric generating facility. The Redeveloper, Project Area and Project shall remain subject to this Agreement after a Permitted Transfer.

(c) Except as described in the last two sentences of this Section 6.2(c), nothing contained in (i) through (iii) above shall waive, relinquish, release or otherwise relieve Redeveloper of its obligations under this Agreement to Complete the Project Improvements in accordance with the terms of this Agreement, and provided further that (except as expressly provided herein) any violation, breach or contravention of this Agreement caused by or on behalf of, or attributable to, such lessee, or any of its agents, servants, employees, officials, contractors or subcontractors, that would cause or result in an Event of Default hereunder shall be deemed a Redeveloper Event of Default. To the extent additional consent of the City is required by law as to any of the aforementioned Permitted Transfers, such consent shall not be unreasonably withheld, delayed or conditioned. Upon the completion of a Permitted Transfer, Redeveloper shall be released from all obligations under the terms and conditions of this Agreement with respect to the subject transferred

component, and the subject transferee (i.e., successor in interest) shall be solely responsible for the performance of the Redeveloper's obligation hereunder with respect to the subject transferred component.

(d) Without limiting the foregoing, the City expressly agrees that for purposes of Article 9 below, if there has been a Permitted Transfer to a new Redeveloper, and that new Redeveloper is the subject of a City Enforcement Action (as hereinafter defined), only the components of the Project Area Controlled by the defaulting Redeveloper pursuant to the Permitted Transfer will be subject to the City Enforcement Action. Thus, the Remaining Portions (as hereinafter defined) which are the subject of any exercise of a termination right by the City under Article 9, will be limited only to those Remaining Portions for which the defaulting Redeveloper is in fact the Redeveloper (and will in no way impact Remaining Portions Controlled by non-defaulting Redeveloper(s), if any).

SECTION 6.3 - Transfers Void. Any transfer of the Redeveloper's interest in violation of this Agreement shall be null and void *ab initio* and the City shall be entitled to seek all remedies available under the terms of this Agreement, including termination of this Agreement. In the event of an alleged violation of this provision by Redeveloper, City shall provide a notice of violation to Redeveloper which shall include a thirty (30) day right to cure any alleged violation by Redeveloper prior to the City taking any action seeking remedies against Redeveloper. In the absence of specific written consent by the City, no such sale, transfer, conveyance or assignment of the Project Area, Project Improvements, or any portion thereof, shall be deemed to relieve the Redeveloper from any obligations under this Agreement.

ARTICLE 7

REDEVELOPER FINANCIAL OBLIGATIONS

SECTION 7.1 - Redeveloper's Financial Commitment. The Redeveloper shall use reasonable efforts to obtain the requisite equity and debt financing in an amount necessary to implement and complete the Project Improvements.

SECTION 7.2 - Project Costs. The Redeveloper expressly represents, covenants, warrants and agrees that all costs associated with the development and financing of the Project Improvements are the sole responsibility of the Redeveloper and all Project Costs shall be borne by the Redeveloper.

SECTION 7.3 - Governmental Fees.

(a) Other than as may be set forth in subsection (b) below, the Redeveloper shall pay all fees required under the City Code and any other fees required by any other Governmental Authority in connection with the construction and development of the Project Improvements.

(b) The City makes no representations or warranties, express or implied, as to the fees, charges or costs of any Governmental Authority or as to any and all such fees required or mandated to be imposed by the City upon the Redeveloper by another Governmental Authority other than the City.

SECTION 7.4 Long term tax exemption. It is anticipated that Redeveloper may request the City consider a long term tax exemption in accordance with the Long Term Tax Exemption Laws (LTTE). Upon the submission of an application for tax exemption, recommendation by the Mayor and the adoption of an Ordinance by the governing body, the parties shall enter into a separate Financial Agreement. Should the governing body fail to adopt an Ordinance authorizing the LTTE, either party may cancel this Agreement

ARTICLE 8

INDEMNIFICATION; INSURANCE

SECTION 8.1 - Redeveloper Indemnification.

(a) The term “**Section 8.1(a) Indemnified Claim**” shall mean (i) the death of any Person or any accident, injury, loss, and damage whatsoever to any Person or to the Property of any Person which shall occur on the Project Area, Project Improvements, or any part thereof, and which results from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors in connection with the condition, use, possession, conduct, management, planning, design, construction, installation, financing, leasing or sale of the Project Area and Project Improvements, but excluding damage, liability, costs and expenses to the extent that same may result from the negligence or willful misconduct of the City Indemnified Parties, and (ii) any lawsuit or other proceeding commenced by any Person or entity and arising from a Redeveloper Event of Default hereunder, other than a lawsuit between Redeveloper and the City Indemnified Parties. The Redeveloper covenants and agrees to indemnify, protect, defend and hold the City Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys’ fees and court costs) of every kind, character and nature arising from a Section 8.1(a) Indemnified Claim.

(b) The Redeveloper shall defend, indemnify and hold harmless the City Indemnified Parties from any claims by any Person or entity (other than Redeveloper) against the City Indemnified Parties and any related liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorney's fees and disbursements which result, wholly or partially, from any bodily injury or property damage that may occur in the Project Area during the term of the Agreement, provided however, that such indemnity shall not include the negligence or willful misconduct of the City Indemnified Parties or the actions or inactions of third-parties over whom the Redeveloper does not exercise direct supervisory Control, as long as the Redeveloper maintains and enforces commercially reasonable

security measures and commercial liability insurance to protect and ensure against such actions or inactions.

(c) In any situation in which a City Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the City Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the City Indemnified Party, unless such failure to give prompt notice impairs the Redeveloper's ability to defend such party or results in the loss of insurance coverage for the Claim. Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the City Indemnified Party, including the employment of counsel reasonably acceptable to the City Indemnified Party, and payment of all expenses, and Redeveloper shall have the right to negotiate and consent to settlement. All of the City Indemnified Parties shall have the right to employ separate counsel at their own costs in any such action and to participate in the defense thereof. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final unappealable judgment against the Redeveloper or the City Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the City Indemnified Party from and against any loss or liability by reason of such settlement or judgment. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that (i) a full release of the City Indemnified Party is obtained, if appropriate, and (ii) no admission of liability by the City Indemnified Party is required.

SECTION 8.2 - Survival of Indemnity. The Redeveloper's indemnity provided under Section 8.1 shall survive the termination of this Agreement.

SECTION 8.3 - Insurance Required. The Redeveloper shall obtain and maintain insurance for the Project as required by its lenders. In addition, the Redeveloper shall provide the following:

(a) Prior to the Commencement of Construction of the Project Improvements, the Redeveloper shall furnish or shall cause to be furnished, to the City, certificates of insurance evidencing the issuance of commercial general liability insurance, insuring the Redeveloper against losses, costs, liabilities, claims, causes of action and damages for bodily injury, property damage and personal injury on all property in the Project Area or related to the construction thereon, in the amount of at least Five Million Dollars (\$5,000,000.00), with the understanding that the required limits of coverage may be satisfied by any combination of primary, umbrella or excess liability insurances. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, including, but not limited to, claims of subcontractors, however occasioned, occurring during the policy term, shall be endorsed to add the City as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the City shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the City.

(b) Builder's Risk Insurance for the benefit of the Redeveloper, during the term of construction, sufficient to protect against loss or damage resulting from fire, flood, wind, and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the insurable elements of the project, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(c) The Redeveloper shall also furnish or cause to be furnished to the City evidence satisfactory to the City that the Redeveloper carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for the City.

(d) Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles insuring the Redeveloper and the City against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage in the amount of at least One Million Dollars (\$1,000,000.00) combined single limit coverage.

(e) In the event that the Redeveloper obtains or is required by any Governmental Authority or to obtain any environmental insurance policy, the City shall be named as an additional insured on such policy.

ARTICLE 9

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1 - Events of Default. Any one or more of the following shall constitute an Event of Default hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the City to observe and perform any covenant, condition or agreement under this Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied (“**Written Notice and Opportunity to Cure**”), provided however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice subject to Redeveloper's rights in accordance with Force Majeure provisions of this Agreement. The parties expressly agree that notwithstanding anything to the contrary contained in this Agreement, no condition, failure, breach or event shall be deemed an Event of Default (“**Event of Default**”) under this Agreement until and unless the defaulting/breaching party shall have been given the required Written Notice and Opportunity to Cure which shall be at least thirty (30) days as provided above. The preceding sentence shall control in the event of any conflict with any other provision of this Agreement.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; or (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days.

(c) After the Commencement of Construction, the Redeveloper shall abandon or substantially suspend construction work (unless such suspension arises out of an Force Majeure or unless Redeveloper shall still be in compliance with the Project Schedule), and any such

abandonment or suspension shall not be cured, ended, or remedied within sixty (60) days after written demand by the City to do so.

(d) The filing of a complaint in Foreclosure against the Redeveloper for any financing in connection with the Project Area, Project Improvements or any part thereof, for which the Redeveloper has not properly contested in good faith, or the issuance of a deed in lieu of Foreclosure for the Project Area, Project Improvements or any part thereof.

(e) There is a Transfer in violation of this Agreement.

SECTION 9.2 - Force Majeure. Failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute a Default or breach of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, accidents, war (whether or not declared), terrorism, riots, acts of God, acts (including, but not limited to, a delay in acting or a failure to act) of government (including without limitation any agency, subdivision or department of the United States of America or the State of New Jersey) or Utilities providers (gas, electric, water, sewer etc.); acts or omissions of other third parties, including litigation by third parties (other than third parties for whom the Party asserting an excusable delay is responsible, such as contractors performing work for that Party); the inability of Redeveloper to secure the required Third Party Financing after utilizing good faith efforts to secure same; the inability of the Redeveloper to perform any obligation under this Agreement as a result of any City default; or other causes which are beyond the reasonable control of the Party asserting an excusable delay (the “**Force Majeure**”). Any extension for Force Majeure shall be contingent upon the Party whose performance has been delayed by a Force Majeure event actually requesting, in writing, an extension for Force Majeure and shall be applicable only to the extent that the time lost as a result of the Force Majeure event cannot be avoided.

SECTION 9.3 - Remedies Upon Events of Default by the Redeveloper.

(a) General. If an Event of Default by the Redeveloper occurs, then the City may take whatever action (a “**City Enforcement Action**”) at law or in equity (including the right to seek specific performance and the right to terminate this Agreement, other than as specifically set forth in Section 9.3(b) below), is necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements or covenants of the Redeveloper, as applicable, under this Agreement, subject to any cure provisions afforded the Redeveloper by the terms of this Agreement.

(b) Termination of Agreement. The City will have the right to terminate this Agreement (subject to any cure provisions afforded to the Holder in Section 10.2 below) following the occurrence of an Event of Default by Redeveloper with respect to the terms of Section 3.1(d), 9.1(b), 9.1(c), 9.1(d) and/or 9.1(e) of this Agreement. The City's election to exercise this

termination right shall be made in the City's sole and absolute discretion. This termination right shall be exercisable upon notice of sixty (60) days to the Redeveloper and any Holder. In the event such termination right is properly exercised, the Agreement shall be deemed terminated, and the Redeveloper's designation as the Redeveloper shall automatically (and without further documentation) be deemed terminated, with respect to all portions of the Project Area excepting only (1) portions of the Project Area for which a Certificate of Completion has been issued, and (2) portions of the Project Area which have been conveyed to a third party purchaser after issuance of a certificate of occupancy.

SECTION 9.4 - Remedies Upon Events of Default by the City.

(a) General. If an Event of Default by the City occurs, then the Redeveloper may take whatever action (a "**Redeveloper Enforcement Action**") at law or in equity (including the right to seek specific performance and the right to terminate this Agreement), is necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements or covenants of the City, as applicable, under this Agreement, subject to any cure provisions afforded the City by the terms of this Agreement.

(b) Termination of Agreement. The Redeveloper's election to exercise the termination right shall be made in the Redeveloper's sole and absolute discretion. This termination right shall be exercisable upon notice of sixty (60) days to the City. The City agrees that Redeveloper's termination of the Agreement shall be effective, at the Redeveloper's election, upon the sixtieth (60th) day following proper notice of such termination by the Redeveloper.

SECTION 9.5 - Failure or Delay. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 9.6 - Remedies Cumulative. Except as otherwise specifically provided in this Agreement, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a Party be entitled to recover more than its actual damages.

SECTION 9.7 - Return of Escrows. Upon any termination or voidance of this Agreement for any reason whatsoever, all unexpended or unencumbered escrows and other amounts deposited with the City under this Agreement shall be promptly returned to Redeveloper.

ARTICLE 10

PROHIBITION AGAINST FINANCING CREATING CREATING A LIEN

SECTION 10.1 - Financing. Neither the Redeveloper nor any successor in interest to the Project Area, Project Improvements, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Area, Project Improvements, or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made or attach to the Project Area, Project Improvements, or any part thereof, except such encumbrances required for the development and construction of the Project Improvements. Redeveloper shall promptly notify the City of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Project Area, Project Improvements, or any part thereof, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same. The provisions of this Agreement shall not be deemed to grant to City the right to approve or review the terms of any such proposed financing.

ARTICLE 11

MISCELLANEOUS

SECTION 11.1 - Notices. Formal notices, demands and communications between the City and the Redeveloper and from the Redeveloper to the City (as required herein) shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notices may also be sent by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. Notice may also be sent by facsimile. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Redeveloper: INFINITI ENERGY LLC
 300 American Metro Blvd. East
 Hamilton, New Jersey 08619
 Attn: Liz Conroy

If to the City:

City of Vineland
640 East Wood Street
Vineland, New Jersey 08360

Attn: City Clerk and City Attorney

SECTION 11.2 - Non-Liability of Officials and Employees of City. No member, official, employee, or consultants of City shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Agreement, except for any negligence or intentional misconduct by any said official and/or employee.

SECTION 11.3 - Non-Liability of Officials and Employees of Redeveloper. No member, officer, shareholder, director, partner, employee or consultant of Redeveloper shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the City, or its successor, or on any obligation under the terms of this Agreement.

SECTION 11.4 - Estoppel Certificate. Within thirty (30) days following written request therefor by a Party hereto, the other Party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

SECTION 11.5 – Financial Institution Changes. If a Financial Institution of Redeveloper, or prospective Financial Institution, requires a non-substantial or non-material (as determined by the City in its reasonable discretion) change in the terms of this Agreement, the City shall reasonably cooperate with the Redeveloper and Financial Institution in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the City as set forth in this Agreement. In addition, the City shall enter into such agreements as a Financial Institution may reasonably require provided that such agreement shall not be inconsistent with the terms of this Agreement (i.e., shall not in any material way increase City's responsibilities or decrease its benefits hereunder).

SECTION 11.6 - No Brokerage Commissions. The City and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent, or otherwise acting on behalf of either the City or the Redeveloper, and the City and the Redeveloper shall indemnify each other with respect to any claims made by any Person, firm or organization claiming to have been so employed by the indemnifying Party, including reasonable and actual attorney's fees.

SECTION 11.7- No Consideration For Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the City, any money or other consideration for or in connection with this Agreement.

SECTION 11.8 - Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto, and their heirs, executors, and administrators.

SECTION 11.9 - Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 11.10 - Severability of Provisions. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 11.11 - Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 11.12 - Execution of Counterpart. This Agreement may be executed in one or more identical counterparts and when each Party has executed and delivered at least one counterpart, this Agreement shall become binding on the Parties for the Term and such counterparts shall constitute one and the same instrument. Any Party is authorized to attach multiple originally signed signature pages to a single counterpart without affecting the validity and enforceability of such signature.

SECTION 11.13 - Drafting Ambiguities; Interpretation. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

SECTION 11.14 - Time Period for Notices. All notices to be given hereunder shall be given in writing in conformance with Section 11.1 hereof, and, unless a certain number of days is specified, within a reasonable time.

SECTION 11.15 - Waivers and Amendments in Writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the City and the Redeveloper.

SECTION 11.16 - Conflict of Interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

SECTION 11.17 - Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. Either Party may bring any action or proceeding to enforce or arising out of this Agreement in any court of competent jurisdiction. If either Party commences such an action in a court located in the County of Cumberland, State of New Jersey, or the United States District Court of New Jersey, Camden Vicinage the other Party hereby agrees that it will submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of forum non conveniens, and in furtherance of such agreement, both parties hereby agree and consent that without limiting other method of obtaining jurisdiction, personal jurisdiction over it in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon both parties by registered mail to or by personal service at the last known address of the subject Party pursuant to the notice section set forth in this Agreement. Any action or proceeding brought by the either Party arising out of this Agreement shall be brought solely in a court of competent jurisdiction located in the County of Cumberland, State of New Jersey, or in the United States District Court of New Jersey, Camden Vicinage.

SECTION 11.18 - Withholding of Approvals. All approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld or delayed unless specifically stated otherwise.

SECTION 11.19 - Hiring of Contractors and Subcontractors. The Redeveloper, its contractors and subcontractors shall comply with all Federal, State, County and City statutes, ordinances, rules and regulations relating to affirmative action programs.

SECTION 11.20 - Redeveloper as “Good Neighbor”. The Redeveloper will be affirmatively encouraged to become a “Good Neighbor” by participating in neighborhood, City civic organizations, community activities, job training programs, educational programs and youth and

community service organizations. In addition, the Redeveloper will use best efforts to encourage the employment of qualified City residents for available positions to be created by the Project.

SECTION 11.21 - Third Party Beneficiaries. The terms and conditions of the Agreement, express or implied, exist only for the benefit of the parties to this Agreement and their respective successors and assigns, and its successors and assigns. No other Person or entity will be deemed to be a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, all as of the date first above written.

ATTEST:

CITY OF VINELAND

BY: _____
Keith Petrosky, RMC
City Clerk

BY: _____
Anthony R. Fanucci
Mayor

WITNESS:

INFINITI ENERGY, LLC.

BY: _____

BY: _____

