CITY OF VINELAND

RESOLUTION NO. 2025- 56

RESOLUTION AUTHORIZING THE EXECUTION OF A POWER PURCHASE AGREEMENT BY AND BETWEEN VINELAND SOLAR LLC, HAMILTON, NEW JERSEY, A DELAWARE LIMITED LIABILITY COMPANY AND THE CITY OF VINELAND FOR POWER GENERATED AT 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 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 $0.02 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 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 found that Infiniti had the financial ability, experience and expertise to redevelop the Property within a reasonable period of time and further found the financial benefits are in the best interest of the City; and

WHEREAS, on October 10, 2023, City Council adopted Resolution 2023-464 appointing Infiniti as the Redeveloper for the Municipal Landfill Redevelopment Area and authorized the execution of a Redevelopment Agreement; and

WHEREAS, on July 8, 2024, Aggreko Energy Transition Solutions (AETS) a division of Aggreko, a global leader in energy solutions, announced the acquisition of Infiniti Energy LLC; and

WHEREAS, Aggreko was founded in 1962 in the United Kingdom and has over 60 years' experience in the global energy market and is found to be highly qualified and with the additional experience of Infiniti, the Director of the Municipal Utility and staff find the acquisition of Infiniti by AETS provides a stronger company to perform al of the proposals submitted by Infiniti; and

WHEREAS, AETS has created a wholly owned subsidiary to operate the Redevelopment Project as proposed by Infiniti and the Director and staff recommends City Council, as the Redevelopment Entity, authorize the appointment of Vineland Solar LLC, Hamilton, New Jersey as the Redeveloper for the Municipal Landfill Redevelopment Area under the same proposal provided to the City as set forth herein; and

WHEREAS, Vineland Solar LLC has proposed the execution of a separate Power Purchase Agreement to be executed in conjunction with a Redevelopment Agreement and Lease Agreement, which contains all of the proposals regarding the purchase of energy generated at the Redevelopment Area by the Redeveloper as more fully set forth in the Power Purchase Agreement attached hereto and made a part hereof; and

WHEREAS, the Director and staff recommends the execution of the Power Purchase Agreement and City Council as the Redevelopment Entity finds it to be in the best interest of the City to execute the Power Purchase Agreement in the form and substance as attached hereto subject to non-material changes as recommended by the Solicitor.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland that City Council President of the City of Vineland as the Redevelopment Entity shall execute the Power Purchase Agreement by and between Vineland Solar LLC, Hamilton, New Jersey, a wholly owned subsidiary of Aggreko Energy Transition Solutions, a division of Aggreko as the Redeveloper for a portion of the Municipal Landfill Non-Condemnation Redevelopment Area in the form attached hereto subject to such changes as recommended by the City Solicitor.

CITY OF VINELAND

Adopted: January 28, 2025

_____
President of Council pfs

ATTEST:

_____
City Clerk kp

SOLAR POWER PURCHASE AGREEMENT

This Solar Power Purchase Agreement (this "**Agreement**") dated as of [January [__], 2025] (the "**Effective Date**"), is entered into by the parties listed below (each a "**Party**" and collectively the "**Parties**").

Purchaser:	The City of Vineland, New Jersey	Seller:	Vineland Solar LLC, a Delaware limited liability company
Address:	[ ] [_____] [_____], [_____] Attention:	Address:	300 American Metro Blvd, East Suite 133 Hamilton, New Jersey 08619 Attention: Prashanth Prakash
Phone	( )_____-_____	Phone	( )_____-_____
E-mail	_____@_____	E-mail	prashanth.prakash@aggreko.com

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar photovoltaic electric generating system and related electric distribution infrastructure described in Exhibit 2 (the "**System**") and installed on the real property described as the "Premises" (the "**Project Premises**" in that certain Solar Ground Lease dated [January [__], 2025] (the "**Solar Ground Lease**") between Purchaser, as landlord, and Seller, as tenant. The Project Premises is a portion of Purchaser's premises which is described in the Solar Ground Lease as the "Property" and shall be hereinafter referred to as the "**Purchaser's Premises**."

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1	Pricing
Exhibit 2	System Description, Delivery Point and Project Premises and Purchaser's Premises
Exhibit 3	General Terms and Conditions
Exhibit 4	Solar Ground Lease
Exhibit 5	Redevelopment Agreement

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Solar Power Purchase Agreement to be duly executed as of the date first set forth above.

Purchaser:

The City of Vineland, New Jersey

Signature: _____
Printed Name: _____
Title: _____

Seller:

VINELAND SOLAR LLC,
a Delaware limited liability company

Signature: _____
Printed Name: _____
Title: _____

Exhibit 1
Pricing

1. Initial Term: Twenty (20) years, beginning on the Commercial Operation Date (the "**Initial Term**").

2. Additional Terms: Up to four (4) terms of five (5) years each beginning on the expiration of the Initial Term (each an "**Additional Term**").

3. Contract Price:

Contract Year	$/kWh
1	$0.02
2	$0.02
3	$0.02
4	$0.02
5	$0.02
6	$0.02
7	$0.02
8	$0.02
9	$0.02
10	$0.02
11	$0.02
12	$0.02
13	$0.02
14	$0.02
15	$0.02
16	$0.02
17	$0.02
18	$0.02
19	$0.02
20	$0.02

*The Contract Price for each Contract Year after the Initial Term shall be subject to negotiations.

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. Condition Satisfaction Date: November 25th, 2025

5. Contract Price Assumptions. The Contract Price is based on the following assumptions:

a. Interconnection costs for the System will be $4,000,000.

b. Statutory prevailing wage rates do apply.

6. Contract Price Exclusions. Unless Seller and Purchaser have agreed otherwise in writing, the Contract Price excludes the following:

a. Unforeseen groundwork (including excavation and circumvention of underground obstacles).

b. Upgrades or repair to customer or utility electrical infrastructure (including: client or utility service, transformers, substations, poles, breakers, reclosers, and disconnects).

c. Snow removal, tree removal, tree trimming, mowing and any landscape improvements.

d. Changes in System design caused by any intentional inaccuracy in information provided by Purchaser.

7. Termination Payment Schedule (Exhibit 3, Section 11.2):

Contract Year	Termination Payment ($)
1	$44,546,179
2	$40,536,800
3	$36,306,441
4	$30,947,332
5	$26,240,232
6	$21,844,064
7	$17,203,491
8	$15,233,257
9	$13,596,389
10	$11,880,518
11	$10,080,854
12	$8,192,321
13	$6,209,536
14	$4,126,798
15	$1,938,060
16	Fair Market Value
17	Fair Market Value
18	Fair Market Value
19	Fair Market Value
20	Fair Market Value

Exhibit 2
System Description, Delivery Point and Project Premises and Purchaser's Premises

1. **System Description**: Vineland Landfill ballasted solar array

2. **System Location**: 1271 South Mill Rd. Vineland, NJ 08362

3. **System Size (DC MW)**: 14.99, not to exceed 10MW AC

4. **System Description (Expected Structure, Etc.)**: Ballasted ground mount solar array (output not to exceed 10MW AC).

5. **Delivery Point and Project Premises**: the Solar Ground Lease contains one or more drawings or images depicting:

   a. Project Premises;

   b. Proposed System location on Project Premises;

   c. Access points needed for Seller to install and service the System; and

   d. Construction assumptions (if any).

6. **Purchaser's Premises**: the Solar Ground Lease contains one or more drawings or images depicting:

   a. Purchaser's Premises;

   b. Proposed System location on Purchaser's Premises;

   c. Delivery point for electricity generated by the System (the "Delivery Point");

   d. Access points needed for Seller to install and service the System; and

   e. Construction assumptions (if any).

7. **Utility**: Vineland Municipal Electric Utility

8. **Acceptance and Payment:** The City of Vineland will accept and pay the applicable Contract price for all energy delivered to the Delivery Point.

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Exhibit 3
General Terms and Conditions

1. **Definitions and Interpretation**. Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

2. **Purchase and Sale of Electricity**. Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System during the Initial Term and any Additional Term (as defined in Exhibit 1, and collectively the "**Term**"). Electric energy generated by the System will be delivered to Purchaser at the Delivery Point identified on Exhibit 2. Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Any purchase, sale and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy.

3. **Term and Termination**.

3.1. Initial Term. The Initial Term of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "**Commercial Operation Date**" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's engineering, procurement and construction contractor and the interconnection or similar agreement with the entity authorized and required under applicable Law to provide electric distribution service to Purchaser (the "**Utility**"), as set forth on Exhibit 2. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement. "**Law**" means federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ, rules, requirements or other pronouncement having the effect of law by any Governmental Authority.

3.2. Additional Terms. Prior to the end of the Initial Term, or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, Seller may give the Purchaser written notice of its election to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified

in Exhibit 1. Seller's request to extend this Agreement shall be subject to the approval of Purchaser in its sole discretion and further subject to negotiations between Purchaser and Seller. Such notice shall be given, if at all, not more than three hundred and sixty (360) and not less than one hundred and eighty (180) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Additional Term, if agreed upon by Purchaser, shall begin immediately upon the conclusion of the Initial Term or the then current Additional Term on the same terms and conditions as set forth in this Agreement.

4. **Billing and Payment**.

4.1. Monthly Charges. Purchaser shall pay Seller monthly for the electric energy generated by the System and delivered to the Delivery Point at the dollar per kilowatt-hour ("**$/kWh**") rate set forth in Exhibit 1 (the "**Contract Price**"). The monthly payment for such energy will be equal to the applicable $/kWh rate multiplied by the number of kilowatt-hours of energy generated during the applicable month, as measured by the System meter.

4.2. Monthly Invoices. Seller shall invoice Purchaser monthly, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser. The Contract Price includes ACH invoicing. If manual invoicing is required, a twenty-five dollar ($25) handling charge will be added to each invoice.

4.3. Payment Terms. All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of one and one-half percent (1.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by Law).

5. **Environmental Attributes and Environmental Incentives**.

5.1. Seller's Right to Attributes and Incentives. Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out–of–pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser, if engaged in commerce and/or trade, shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the written approval of Seller. Approval shall

not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication.

5.2. Definitions. For the purposes of this Agreement:

5.2.1. "**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

5.2.2. "**Environmental Incentives**" means any and all credits (including solar renewable energy credits or certificates), rebates, subsidies, payments or other incentives that relate to self–generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority.

5.2.3. "**Governmental Authority**" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, and the New Jersey Office of Clean Energy), or any arbitrator with authority to bind a party at law.

5.2.4. "**Tax Credits**" means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local Law relating to the construction, ownership or production of energy from the System.

6. **Conditions to Obligations**.

6.1. Conditions to Seller's Obligations. Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date, which may be extended or modified by Seller in its sole discretion:

6.1.1. Completion of all inspections, studies, and investigations of the Project Premises including, if applicable, geotechnical work, environmental work, and real estate due diligence to confirm the suitability of the Project Premises for the System;

6.1.2. Approval of (A) this Agreement and (B) the Construction Agreement for the System by Seller's Financing Parties. "**Construction Agreement**" as used in this subsection means an agreement between Seller and any engineering, procurement and construction contractor or subcontractor to install the System;

6.1.3. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;

6.1.4. Receipt of all necessary Permits. "**Permits**" as used in this Agreement means all permits, conditional use permits, authorizations, rights, filings, submissions, tariffs, rates, plans, licenses, approvals, consents, waivers, exemptions, variances, franchises, registrations, orders, judgments, decrees, certifications and other authorizations of any Governmental Authority necessary for the siting, use, operation, ownership, development, or construction of the System or the conduct or operation of the business of the Seller;

6.1.5. Execution of all necessary agreements with the Utility for interconnection of the System to the Purchaser's electrical system and/or the Utility's electric distribution system.

6.1.6. Seller shall have notified Purchaser that the System is mechanically complete (the "**COD Notice**"), which such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the delivery of such notice.

6.1.7. All Post-Closure Requirements under and as defined in that certain Redevelopment Agreement dated as of the date hereof (the "**Redevelopment Agreement**") between Seller and the City attached hereto as Exhibit 5, have been satisfied.

6.2. Failure of Conditions. If any of the conditions listed in Section 6.1 are not satisfied by the Condition Satisfaction Date set forth in Section 4 of Exhibit 1 of this Agreement, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates, then Seller may terminate this Agreement upon ten (10) days written notice to Purchaser without liability for costs or damages or triggering a default under this Agreement.

6.3. Commencement of Construction. Seller's obligation to commence construction and install the System is conditioned on Seller's receipt of: (A) proof of insurance for all insurance required to be maintained by Purchaser under this Agreement, and (B) to the extent there is any person or entity holding a mortgage, lien or other encumbrance over Purchaser's Premises, written

confirmation from any such person or entity, that such person or entity will recognize Seller's rights under this Agreement for as long Seller is not in default hereunder.

6.4. Conditions to Purchaser's Obligations. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System.

7. **Seller's Rights and Obligations**.

7.1. Permits and Approvals. Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

7.1.1. any Permits required for siting, use, operation, ownership, development, or construction of the System; and

7.1.2. any agreements and approvals from the Utility necessary in order to interconnect the System to the Purchaser's electrical system and/or the Utility's electric distribution system. Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals.

7.2. Standard System Repair and Maintenance. Seller shall be responsible for: (i) constructing and installing the System at the Project Premises in accordance with the Redevelopment Agreement, and (ii) during the Term, operating and performing all routine and emergency repairs to, and maintenance of, the System and access points needed for Seller to install the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement, in each case as required by the Solar Ground Lease. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs due to damage caused by or at the direction of Purchaser, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractors' then current standard rates.

7.3. Non-Standard System Repair and Maintenance. If Seller incurs incremental costs to operate and maintain the System due to unforeseeable conditions at the Project Premises or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the Parties will work in good faith to equitably adjust pricing, schedule and other terms of this Agreement to compensate for any work in excess of normally expected work required to be performed by Seller. In such event, Purchaser shall pay to Seller the actual additional costs of such maintenance and expenses incurred by Seller to operate and maintain the System.

7.4. Breakdown Notice. Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System. Purchaser shall provide disconnection services, when requested, pursuant to that certain Vineland Municipal Electric Utility Commercial Service

Agreement dated as of [____] (the "**CSA**") between [____] and [____] bearing Service Agreement Number [____] and based upon Purchaser's then-current pricing terms (provided to and agreed by Seller in advance).

7.5. Suspension. Notwithstanding anything to the contrary herein, Seller shall be permitted to take the entire System off line for a total of forty-eight (48) daylight hours (each, a "**Seller Scheduled Outage**") per calendar year during the Term during which hours Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for (i) the purpose of maintaining and repairing the System, or (ii) due to unforeseeable circumstances which are beyond the control of Seller, and in each case, such suspension of service shall not constitute a breach of this Agreement; provided, however, that if commercially practicable, Seller shall use commercially reasonable efforts to notify Purchaser in writing of each such Seller Scheduled Outage at fourteen (14) days in advance of the commencement of a Seller Scheduled Outage. In the event that Seller Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year beyond Seller's control whereby the System did not generate any power to the Delivery Point (an "Excess Outage Period"), in each case for a reason other than a Force Majeure event, then Purchaser shall notify Seller in writing of such Excess Outage Period, and upon providing Seller with written evidence reasonably satisfactory to Seller of Purchaser's Excess Cost of Power, Seller shall pay Purchaser an amount equal to the Excess Cost of Power within sixty (60) days following receipt thereof.

As used in this Agreement, the term "Excess Cost of Power" means the difference between:

(i) product of: (a) the rate (expressed in $/kWh) actually paid by Purchaser for electrical energy during the Excess Outage Period, multiplied by (b) the amount of energy actually purchased by Purchaser from a source other than Seller during the Excess Outage Period (expressed in MWh) (the "Excess Outage Period Usage")

minus

(ii) the Contract Price (expressed in $/kWh), multiplied by the Excess Outage Period Usage.

If the difference of the forgoing is a negative number then such Excess Cost of Power shall be deemed to be zero.

7.6. Use of Contractors and Subcontractors. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement; provided, however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.

7.7. Liens and Payment of Contractors and Suppliers. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Purchaser's Premises free and clear of any liens related to such charges.

7.8. No Warranty. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise.

8. **Purchaser's Rights and Obligations**.

8.1. OSHA Compliance. Seller shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety Laws or codes are adhered to in their performance under this Agreement.

8.2. Maintenance of Purchaser's Premises. Purchaser shall, at its sole cost and expense, maintain the Purchaser's Premises in good condition and repair. Purchaser will use commercially reasonable efforts to ensure that the Purchaser's Premises remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Purchaser's Premises from the Utility. Purchaser is fully responsible for the maintenance and repair of the Purchaser's Premises' electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment. Purchaser shall promptly notify Seller of any matters of which it is aware (or becomes aware) pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

8.3. No Alteration of Purchaser's Premises. Purchaser shall not make any alterations or repairs to the Project Premises which could adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System caused by Purchaser's actions or negligence is necessary to perform any alterations or repairs to the Project Premises which could adversely affect the operation and maintenance of the System, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes and Environmental Incentives that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during the disconnection shall be based, during the first Contract Year, on the estimated levels of production and, after the

first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "**Contract Year**" means the twelve-month period beginning at 12:00 AM on the Commercial Operation Date or on any anniversary of the Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Contract Year shall begin on the Commercial Operation Date.

8.4. Outages. Purchaser shall be permitted to be offline for a total of forty-eight (48) daylight hours (each, a "**Scheduled Outage**") per calendar year during the Term during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at fourteen (14) days in advance of the commencement of a Scheduled Outage. In the event that (A) Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year beyond Purchaser's control, (B) there are unscheduled outages exceeding a total of forty-eight (48) daylight hours per calendar year, in each case for a reason other than a Force Majeure event, or (C) the Purchaser fails to maintain the Purchaser's Premises pursuant to Section 8.2 hereof and such failure leads to an outage of the System which is not otherwise a Schedule Outage, then in each case, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes and Environmental Incentives that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 8.3.

8.5. Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding anything else herein to the contrary, pursuant to Section 17.1, Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.

8.6. Insolation. Purchaser understands that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation, provided, however, that the actions taken by third parties as of right shall not constitute interference by Purchaser. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify

Seller immediately and shall, to the extent within Purchaser's control, cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8.6 against Purchaser.

8.7. Breakdown Notice. Purchaser shall notify Seller within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System. Purchaser shall notify Seller immediately upon (i) an interruption in the supply of electrical energy from the System; or (ii) the discovery of an emergency condition respecting the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays.

9. **Change in Law**.

9.1. Definition. "**Change in Law**" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable Law, regulation, rule, order, policy, practice, custom, or procedure; (ii) the imposition of any material conditions on the issuance or renewal of any applicable Permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future Laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations.

9.2. Effect of Change in Law. If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

10. **Measurement**. Seller shall install one or more revenue grade meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Seller shall maintain the meter(s) in accordance with industry standards.

11. **Default, Remedies and Damages**.

11.1. Default. Subject to any applicable rights of the Parties set forth in Section 16 relating to Force Majeure, any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the "**Defaulting Party**", the other Party shall be deemed to be the "**Non-Defaulting Party**", and each event of default shall be a "**Default Event**":

11.1.1. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");

11.1.2. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

11.1.3. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;

11.1.4. Purchaser, whether voluntarily or involuntarily, loses, conveys, transfers or sells its rights to occupy and enjoy the Purchaser's Premises;

11.1.5. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure;

11.1.6. Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System to the Delivery Point. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement;

11.1.7. in the event Purchaser is a party to an interconnection, net energy metering or similar agreement with the Utility with respect to the System, Purchaser terminates, defaults, or an event of default occurs under such agreement;

11.1.8. The occurrence of an Event of Default under and as defined in the Solar Ground Lease by either party thereunder shall constitute a Default Event by such party hereunder;

11.1.9. The occurrence of an Event of Default under and as defined in Redevelopment Agreement by either party thereunder shall constitute a Default Event by such party hereunder; or

11.1.10. The occurrence of a default under the CSA by either party thereunder shall constitute a Default Event by such party hereunder.

11.2. Remedies.

11.2.1. Remedies for Payment Default. If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.

11.2.2. Remedies for Other Defaults. On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.

11.2.3. Damages Upon Termination by Default. Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):

11.2.3.1. Purchaser. If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to, for any given Contract Year, the greater of (i) the amount set forth on Exhibit 1, Clause 7, and (ii) the Fair Market Value of the System as determined pursuant to Section 14.3 and the System, all equipment and improvements of Seller shall inure to Purchaser. The Termination Payment shall not be less than zero. The Parties agree that actual damages to Seller in the event this Agreement is terminated prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.

11.2.3.2. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) the net present value (using a discount rate equal to the prime rate as published in the Wall Street Journal or any successor publisher thereof, or if not so published, the prime rate as published in the source mutually agreed between the Parties) of the excess, if any, of the reasonably expected cost of electric energy from the Utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (3) any removal costs incurred by Purchaser, and (4) any and all other

amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Parties agree that actual damages to Purchaser in the event this Agreement is terminated prior to the expiration of the Term as the result of a Default Event by Seller would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Purchaser as a result of the early termination of this Agreement.

11.2.3.3. Obligations Following Termination. If a Non-Defaulting Party terminates this Agreement pursuant to this Section 11.2, then Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

12. **Representations, Warranties and Covenants**.

12.1. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date:

12.1.1. Such Party is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any Law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws now or hereafter in effect relating to creditors' rights generally).

12.1.2. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all Laws that relate to this Agreement in all material respects.

12.2. Purchaser's Representations, Warranties and Covenants. Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

12.2.1. Purchaser's Premises. Purchaser has title to or a leasehold or other property interest in the Purchaser's Premises.

12.2.2. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.

12.2.3. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Purchaser's Premises, Purchaser's planned use of the Project Premises, and Purchaser's estimated electricity requirements, is accurate in all material respects.

12.2.4. Purchaser Status. Purchaser is a municipal public utility under and as defined in NJ Rev Stat § 40A:1-1 (2023).

13. **System and Project Premises Damage and Insurance**.

13.1. System and Project Premises Damage.

13.1.1. Seller's Obligations. If the System is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall, to the extent available, apply all insurance proceeds to promptly repair and restore the System to its pre-existing condition; provided, however, that if more than thirty percent (30%) of the System is destroyed during the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the greater of (1) the Fair Market Value of the System and (2) the amount set forth on Exhibit 1, Clause 7; and all other costs previously accrued but unpaid under this Agreement.

13.1.2. Purchaser's Obligations. If the Purchaser's Premises is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Project Premises to its pre-existing condition; provided, however, that if more than thirty percent (30%) of the Purchaser's Premises is destroyed and such destruction inhibits Seller's ability to operate, maintain, replace or otherwise utilize the System for the purposes set forth herein during the Initial Term or during any Additional Term, then Purchaser shall not be required to restore the Project Premises, but may instead terminate this Agreement unless Seller elects to restore the Purchaser's Premises at Seller's cost.

13.2. Insurance Coverage. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

13.2.1. Seller's Insurance. Seller shall maintain insurance in accordance with the Solar Ground Lease. Seller shall maintain commercial general liability and property coverage insuring the System for its replacement value.

13.3. Policy Provisions. All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

13.4. Certificates. Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

13.5. Application of Insurance Proceeds. All proceeds from the Purchaser's insurance related to, arising from, or connected with any damage or destruction to the System or component

parts thereof shall be paid over to the Seller within five (5) days of Purchaser's receipt of such insurance proceeds.

13.6. Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

14. **Ownership; Option to Purchase**.

14.1. Ownership of System. Throughout the Term (except as otherwise permitted in Section 17), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives, and Tax Credits, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Purchaser Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 17) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. To the extent there is any person or entity holding a mortgage, lien or other encumbrance over Purchaser's Premises, Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Purchaser's Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Purchaser's Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Purchaser's Premises, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of Purchaser's Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Purchaser's Premises in the office where real estate records are customarily filed in the jurisdiction where the Purchaser's Premises is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Purchaser's Premises (if the Purchaser's Premises is leased by Purchaser), any mortgagee with a lien on the Purchaser's Premises, and other persons or entities holding a similar interest in the Purchaser's Premises. To the extent that Purchaser does not own the Purchaser's Premises, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Purchaser's Premises or termination of Purchaser's lease of the Purchaser's Premises.

14.2. Option to Purchase. At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of (i) the Termination Payment (if applicable) and (ii) Fair Market Value of the System. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System, provided, however, that Seller shall assign to Purchaser any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms.

14.3. Determination of Fair Market Value.

14.3.1. "**Fair Market Value**" means the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System, advances in solar technology and the present value using a discount rate reasonably determined by the Seller of all associated future income streams expected to be received by Seller arising from the operation of the System for the remaining term of the Agreement including but not limited to the expected price of electricity, Environmental Attributes, Environmental Incentives, and Tax Credits, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation.

14.3.2. Within thirty (30) days after Purchaser has exercised its option to purchase the System, the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

15. **Indemnification and Limitations of Liability**.

15.1. General. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "**Indemnified Parties**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 12 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 15.1 however, shall not apply to liability arising from any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15.3.

15.2. Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably

satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 15.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 15.2 for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

15.3. Environmental Indemnification. Purchaser shall indemnify, defend and hold harmless Seller from and against the violation or breach of any Environmental Law and all Liabilities arising out of or relating to the existence at, on, above, below or near the Project Premises or Purchaser's Premises, as the case may be, of any Hazardous Substance except to the extent caused by Seller or Seller's agents and assigns. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Project Premises or Purchaser's Premises, as the case may be, or any deposit, spill or release of any Hazardous Substance, or the violation or breach of any Environmental Law applicable to the Project Premises or Purchaser's Premises, as the case may be. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any Laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority. "**Environmental Law**" means any Laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (A) pollution, (B) the protection or regulation of human health, natural resources or the environment, (C) the treatment, storage or disposal of Hazardous Substances, or (D) the emission, discharge, release or threatened release of Hazardous Substances into the environment, including (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (41 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901 et seq.), and the Toxic Substances Control Act, as amended ("TSCA") (15 U.S.C. § 2601 et seq.); and any similar or implementing state Law.

15.4. Limitations on Liability.

15.4.1. No Consequential Damages. Except with respect to indemnification for third party claims pursuant to this Section 15, any payment made pursuant to Section 11.2.3 (*Damages Upon Termination by Default*), and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-

performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of Environmental Attributes or Environmental Incentives to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages.

15.4.2. Actual Damages. Except with respect to indemnification for third party claims, any payment made pursuant to Section 11.2.3 (*Damages Upon Termination by Default*), and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 15.4.2 shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within one (1) year after the cause of action accrues.

16. **Force Majeure**.

16.1. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; unavailability of materials; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); acts or omissions of 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 Seller to secure the required Third Party Financing (as defined in the Redevelopment Agreement) after utilizing good faith efforts to secure same; the inability of the Seller to perform any obligation under the Redevelopment Agreement as a result of any City default; and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

16.2. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt notice, followed by a written notice (which may be by email or other electronic methods) reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater

scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. To the extent that performance is suspended under this Agreement for more than 14 calendar days in the aggregate due to any Force Majeure events, the Term shall be extended day for day for each day performance is suspended due to such Force Majeure event.

16.3. Notwithstanding anything herein to the contrary, Purchaser's obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.

17. **Assignment and Financing**.

17.1. Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser assign any of its rights, duties, or obligations under this Agreement to: (i) one or more of its affiliates, (ii) any entity which controls, is controlled by or under common control with Seller or its affiliates (the "**Affiliate Parties**"), (iii) a Financing Party, (iv) intentionally deleted, (v) any person or entity purchasing or otherwise succeeding to all or substantially all of the assets of Seller or one of the Affiliate Parties, (vi) any entity engaged in a joint venture, partnership or similar arrangement with Seller or any Affiliate Party, (vii) to a successor entity in a merger or acquisition transaction; or (viii) a third party that (x) has at least three (3) years of experience operating solar facilities of similar capacity as, or higher capacity than, the System; and (y) assumes in writing all of Seller's obligations under this Agreement In the event of any such assignment, the Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld, conditioned, or delayed if Purchaser has been provided with reasonable proof that the proposed assignee (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees. Except in the case of any collateral assignment of this Agreement by Seller to any Financing Party in accordance with this Section 17.1, any assignment by Seller shall relieve Seller of all future performance, liabilities, and obligations of Seller under this Agreement, provided that the assignee assumes all of the obligations of Seller under this Agreement. For the avoidance of doubt, any collateral assignment to a Financing Party shall not require any such collateral assignee to assume the obligations of Seller under this Agreement.

17.2. Financing. The Parties acknowledge that Seller may obtain Financing from one or more Financing Parties. "**Financing**" means (i) development, bridge, construction and long-term or permanent financing or other, (ii) credit support from one or more Financing Parties, credit enhancement, or any hedging or derivative transaction, (iii) investment capital or working capital and/or (iv) structured tax equity financing, securitization financing, sale-leaseback financing, and/or any other debt or equity financing, including without limitation, any renewals, refundings,

extensions or refinancings of any of the foregoing. "**Financing Party**" or "**Financing Parties**" means any individual, entity, financial institution, leasing company, or lender providing Financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 17.1, Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties. Purchaser agrees to send to any Financing Party for which Seller provides contact information a copy of all notices that Purchaser sends under this Agreement to Seller at the same time that Purchaser sends such notice to Seller.

17.3. Successor Servicing. The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

18. **Confidentiality and Publicity**.

18.1. Confidentiality. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 18.1, except as set forth in Section 18.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party

agrees that the disclosing Party would be irreparably injured by a breach of this Section 18.1 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 18.1. To the fullest extent permitted by applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18.1, but shall be in addition to all other remedies available at law or in equity.

18.2. Permitted Disclosures. Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable Law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable Law), (iii) is independently developed by the receiving Party or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable Law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by Law.

19. **Goodwill and Publicity**. Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable Law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

20. **Miscellaneous Provisions**.

20.1. Choice of Law. The Law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.

20.2. Arbitration and Attorneys' Fees. 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. The Parties agree to resolve any disputes through arbitration in the State of New Jersey. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be

consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

20.3. Notices. All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each Party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

20.4. Survival. Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 7.8 (*No Warranty*), Section 11 (*Default, Remedies and Damages*), Section 13.2 (*Insurance Coverage*), Section 15 (*Indemnification and Limits of Liability*), Section 18 (*Confidentiality and Publicity*), Section 20.1 (*Choice of Law*), Section 20.2 (*Arbitration and Attorneys' Fees*), Section 20.3 (*Notices*), Section 20.7 (*Comparative Negligence*), Section 20.8 (*Non-Dedication of Facilities*), Section 20.10 (*Service Contract*), Section 20.11 (*No Partnership*), Section 20.12 (*Full Agreement, Modification, Invalidity, Counterparts, Captions*), and Section 20.14 (*No Third Party Beneficiaries*).

20.5. Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

20.6. Right of Waiver. Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by Law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

20.7. Comparative Negligence. It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

20.8. Non-Dedication of Facilities. Nothing herein shall be construed as the dedication by Seller of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, either party hereunder shall have the right to terminate this Agreement.

20.9. Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

20.10. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

20.11. No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

20.12. Full Agreement, Modification, Invalidity, Counterparts, Captions. This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted

so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable Law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

20.13. Forward Contract. The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

20.14. No Third-Party Beneficiaries. Except for assignees, Financing Parties, and Successor Providers permitted under Section 17, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other person or entity.

End of Exhibit 3

Exhibit 4
Solar Ground Lease

[to be attached]

Exhibit 5
Redevelopment Agreement

[to be attached]