

SOLAR POWER & SERVICES AGREEMENT

between

GRE ERIE COUNTY GROUND LLC

and

ERIE COUNTY

Dated as of Feb. 29th, 2016

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement is made and entered into as of this 29 day of February, 2016 (the "Effective Date"), between **GRE Erie County Ground LLC**, a limited liability company duly formed under the laws of the State of Delaware ("Provider"), and **Erie County**, a New York county ("Host"; and, together with Provider, each, a "Party" and together, the "Parties").

WITNESSETH:

WHEREAS, Host owns the Property (defined herein) fee simple;

WHEREAS, Host desires that Provider install and operate solar photovoltaic systems at the Property for the purpose of providing Solar Services (as hereafter defined) to Host, and Provider is willing to undertake to do the same; and

WHEREAS, Provider desires to sell, and Host desires to purchase, such Solar Services at the Property, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS.

- 1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Access License" shall mean a royalty-free license for the duration of this Agreement, granted to the Provider, Lender, their successors and permitted assigns, and their respective agents and contractors pursuant to, and as further described, in Section 7.2(g).

"Actual Monthly Production" means the amount of Energy generated by the System and delivered to the Delivery Point as recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.3.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person. For the purposes of this definition, "control" and its derivatives mean, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise. "Control" may be deemed to exist notwithstanding that a Person owns or holds, directly or indirectly, less than 50% of the beneficial equity interest in another Person.

"Affiliate Assignee" has the meaning set forth in Section 14.2(a).

“Agreement” means this Solar Power & Services Agreement, including the preamble and the Schedules, Appendices and Exhibits attached hereto and incorporated herein by reference.

“Anniversary Year” has the meaning set forth in Section 5.7.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Applicable Standard” means the Green-e Energy National Standard, which is the voluntary certification and verification program for renewable energy administered by the non-profit Center for Resource Solutions

“Assignment” has the meaning set forth in Section 14.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

“Change in Law” means that, after the Effective Date, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any respect by any Applicable Law (including any interpretation thereof). Change in Law does not include changes in Tax laws.

“Commercial Operation Date” has the meaning set forth in Section 3.3(c).

“Completion Notice” has the meaning set forth in Section 3.3(b).

“Confidential Information” has the meaning set forth in Section 16.1.

“Contract Price” has the meaning set forth in Section 6.1.

“Delivery Point” has the meaning set forth in Section 5.1(a).

“Dispute” has the meaning set forth in Section 12.1.

“Early Termination Date” has the meaning set forth in Section 2.1.

“Early Termination Fee” means the fee payable by Host to Provider under the circumstances described in Section 2.2 or Section 11.2(b).

“Effective Date” has the meaning set forth in the preamble hereof.

“Energy” means electric energy measured in kilowatt hours (kWh) generated by the System in accordance with the specifications set forth in the System Description.

“Environmental Attributes” has the meaning set forth in Section 5.2(b).

“Environmental Laws” mean any Applicable Law (including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act) in effect relating to the remediation, generation, production, installation, use, storage, treatment, transportation, release, threatened release, or disposal of Hazardous Materials, or noise control, or the protection of human health, safety, natural resources, or the environment.

“Expiration Date” has the meaning set forth in Section 2.1.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated 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. Fair Market Value of the System will be determined pursuant to Section 2.3.

“Fitch” means Fitch Ratings, Ltd.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Green-e Certified” refers to an environmental commodity or product that has been certified by the Green-e Governance Board, acting through the Center for Resource Solutions, as mitigating climate change and helping to build a sustainable energy future.

“Hazardous Material” means any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic (to human health or the environment) or a pollutant or a contaminant under or pursuant to any Applicable Law, including any constituents, admixture or solution thereof, and specifically including petroleum and all derivatives and constituents thereof or synthetic substitutes therefore or additives thereto and asbestos or asbestos-containing materials.

“Host” has the meaning set forth in the preamble hereof.

“Host Conditions Precedent” has the meaning set forth in Section 2.6.

“Host Default” has the meaning set forth in Section 11.2(a).

“Host Indemnified Parties” has the meaning set forth in Section 17.1.

“Host Permits” has the meaning set forth in Section 7.1(b).

“Host’s Interconnection Obligations” has the meaning set forth in Section 4.4.

“Host’s Property Usage” has the meaning set forth in Section 7.2(g).

“Indemnified Party” has the meaning set forth in Section 17.3(a).

“Indemnifying Party” has the meaning set forth in Section 17.3(a).

“Indemnified Persons” means the Host Indemnified Parties or the Provider Indemnified Parties, as the context requires.

“Initial Term” has the meaning set forth in Section 2.1.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Property.

“Interconnection Agreement” means any standard interconnection agreement to be entered into by and between the Local Electric Utility and Host, and any other written agreement regarding the interconnection, operation or maintenance of the System entered into between the Local Electric Utility and Host.

“Invoice Date” has the meaning set forth in Section 6.2.

“kWh Rate” means the amount Host will pay to Provider, expressed in terms of dollars per kWh (\$/kWh), for Solar Services delivered under this Agreement, where the specific value for each applicable year is presented in Schedule 4 of the Appendix.

“Lender” means either (i) any Person who has or will make a loan to Provider to finance all or part of the System costs or (ii) any Person to whom Provider has sold or conveyed the System, as applicable and Leased back the System under a sale/leaseback arrangement or (iii) any Person to whom Provider has otherwise sold or conveyed the System where such Person acquires the tax credits or other benefits of such System and Provider retains or receives back a leasehold or other interest in the System such that Provider has the rights and authority to perform its obligations as Provider hereunder including a partnership-flip transaction.

“Liens” has the meaning set forth in Section 7.1(g).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host at the Property.

“Loss” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Minimum Credit Rating” means, with respect to a party, such party’s senior unsecured debt is rated “BBB+” or better by S&P, “BBB+” or better by Fitch, or “Baa1” or better by Moody’s.

“Monitoring Equipment”, for a System, has the meaning set forth in Schedule 2.

“Moody’s” means the Moody’s Investor Services, Inc.

“Notice of Claim” has the meaning set forth in Section 17.3(a).

“Option Price” has the meaning set forth in Section 2.2.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Property” means the property described in Schedule 1 of the Appendix.

“Provider” has the meaning set forth in the preamble hereof.

“Provider Conditions Precedent” has the meaning set forth in Section 2.5.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 17.2.

“Prudent Industry Practices” means the practices, methods and acts engaged in or approved by a significant portion of the solar energy industry that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, reliability, safety, environmental protection, economy and expedition.

“Purchase Date” means the six (6), ten (10) and fifteen (15) year anniversary of the Commercial Operation Date, and the last day of the Term or any Renewal Term, regardless of whether such last day is the result of exercise of the Purchase Option, Early Termination or Expiration.

“Purchase Option” has the meaning set forth in Section 2.2.

“Qualified Assignee” has the meaning set forth in Section 14.3(b)(v).

“Qualified Purchaser” has the meaning set forth in Section 14.2(b)(i).

“REC” means a Renewable Energy Credit representing the Environmental Attributes associated with one (1) Megawatt hour (“MWh”) of electric generation from a renewable energy source that qualifies under the Applicable Standard.

“Renewal Rate” means, as of the beginning of any Renewal Term, the Fair Market Value for the provision of Solar Services at the Property during such Renewal Term, as agreed between the Parties prior to the beginning of such Renewal Term. Except as provided in Section 2.1, the Renewal Rate shall be the kWh Rate with applicable escalation, as continuing from the final year of the expiring Term. Upon the establishment of any new kWh Rate, Schedule 4 to the Appendix shall be amended to reflect such new kWh Rate.

“Renewal Term” has the meaning set forth in Section 2.1.

“Replacement Agreement” has the meaning set forth in Section 14.2(a).

“Representative” has the meaning set forth in Section 16.1.

“S&P” means the Standard & Poor’s Rating Services.

“Security” has the meaning set forth in Section 14.2(b)(i).

“Solar Insolation” or “Insolation” means the amount of solar energy, measured in kWh per square meter, falling on a particular geographic location, as published by the National Renewable Energy Laboratory.

“Solar Services” means the supply of Energy output from the System at the Delivery Point together with other services or efficiencies associated with the operation of the System.

“Solar Services Payment” has the meaning set forth in Section 6.1.

“Stated Rate” means a rate per annum equal to the lesser of (a) the Federal Funds Rate and (b) the maximum rate allowed by Applicable Law.

“System” is the photovoltaic solar power generation system owned and/or operated by the Provider and installed at the Property as described in Schedule 2 of the Appendix. System also includes the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring interconnected with the Local Electric Utility.

“System Acceptance Testing” has the meaning set forth in Section 3.3(a).

“System Description”, for a System, has the meaning set forth in Schedule 2 of the Appendix.

“System Installation Period” means the period from (and including) the date that Provider (or its subcontractors) commences physical installation of the System on the Property to (but excluding) the Commercial Operation Date.

“System Operations” means the operation, maintenance and repair of the System performed by or for Provider during the Term, as well as all back office services necessary for Provider to support the System and process bills and payments.

“System Permits” has the meaning set forth in Section 7.1(b).

“System Test Procedures” has the meaning set forth in Section 3.3(b).

“System Site” of a System has the meaning set forth in Schedule 2 of the Appendix.

“Taxes” has the meaning set forth in Section 9.1.

“Tax Attributes” has the meaning set forth in Section 5.2(c).

“Term” has the meaning set forth in Section 2.1.

“UNFCCC” has the meaning set forth in Section 5.2(b).

“Work” means the Installation Work, the System Operation, the Solar Services and Provider’s other obligations under this Agreement.

1.2 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that import the singular connotation shall be interpreted as plural, and words that import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Schedules”, “Appendix or Appendices”, “Exhibits”, “Articles” and “Sections” refer to Schedules, Appendix or Appendices, Exhibits, Articles and Sections of this Agreement.

1.3 Exhibits, Schedules and Appendices. The tables below list and describe each Exhibit, Schedule and Appendix to this Agreement.

| <u>Exhibit</u> | <u>Description</u> |
|-----------------------|--------------------------------------|
| Exhibit A | Acknowledgement and Confirmation |
| Exhibit B\B-1 | Owner Acknowledgement |
| Exhibit C | Form of Memorandum of Access License |
| Exhibit D | Form of Invoice |
| Exhibit E | Required Certifications |

| <u>Appendix</u> | <u>Description</u> |
|------------------------|--|
| Appendix: Schedule 1 | Description of the Property |
| Appendix: Schedule 2 | Description of the System |
| Appendix: Schedule 3 | System Acceptance Testing Procedure |
| Appendix: Schedule 4 | Solar Services Payment |
| Appendix: Schedule 5 | Early Termination and Purchase Option |
| Appendix: Schedule 6 | Emergency Contact Information |
| Appendix: Schedule 7 | Monthly Benchmark Production Percentages |

Required Certifications:

Exhibit E1 – Initial Disclosure Form

Exhibit E2 – Proposer’s Certification

Exhibit E3 – Certification regarding Debarment and Suspension

Exhibit E4 – Certification Regarding Drug-Free Workplace Requirements

Exhibit E5 – Certification Regarding Lobbying Certification

Exhibit E6 – Apprenticeship Requirements

Exhibit E7 – Erie County Equal Pay Certification

Exhibit E8 – Ethics and Offenses Certification

Exhibit E9 – Non-Collusion Bidding Certificate

Exhibit E10 – Legal Status Form

2. TERM AND TERMINATION.

- 2.1 Term. The initial term of this Agreement shall commence on the Commercial Operation Date and shall continue for a period of twenty (20) years thereafter (the “Initial Term”), unless and until terminated earlier pursuant to the provisions of this Agreement. After the Initial Term, the Host shall have the option to renew this Agreement for one (1) five-year term (“Renewal Term”) by providing written notice of renewal to the Provider at least thirty (30) days prior to the expiration of the Initial Term or then applicable Renewal Term. Within five (5) days of receipt of such renewal notice, Provider may initiate, by written notice to Host, a renegotiation of the Renewal Rate. The Initial Term and all subsequent Renewal Terms, if any, are referred to collectively as the “Term.” The date on which this Agreement terminates by reason of expiration of the then applicable Term is hereafter referred to as the “Expiration Date.” Any other date on which this Agreement terminates in accordance with the terms hereof is hereafter referred to as the “Early Termination Date.” Should the Parties be unable to reach agreement on a revised Renewal Rate prior to the commencement of the

proposed Renewal Term, then this Agreement shall expire at the end of the Initial Term or then current Renewal Term.

2.2 Purchase Option.

(a) On any Purchase Date, so long as a Host Default shall not have occurred and be continuing, Host has the option to purchase the System (the “Purchase Option”) for a purchase price (the “Option Price”) equal to the greater of (a) the Fair Market Value of the System as of the Purchase Date, as determined pursuant to Section 2.3, or (b) the Early Termination Fee (Option Price) as of the Purchase Date as specified in Schedule 5 Column 2 of the Appendix. To exercise its Purchase Option, Host shall, not less than sixty (60) days prior to the Purchase Date, provide written notice to Provider of Host’s intent to exercise its option to purchase the System on such Purchase Date. Upon receipt of Host’s notice, Provider and Host shall promptly determine the Fair Market Value (“FMV”) of the System, as provided in Section 2.3 below. Once the FMV has been established, Provider shall promptly notify Host of the resulting Option Price. Host shall then have a period of five (5) Business Days after notification to confirm or retract its decision to exercise the Purchase Option. In the event Host confirms its exercise of the Purchase Option in writing to Provider, (i) the Parties will promptly execute all documents necessary to (A) cause title to such System to pass to Host, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person as of the Purchase Date, and (B) assign all warranties for the System to Host, and (ii) Host will pay the Option Price to Provider, such payment to be made in accordance with any previous written instructions delivered to Host for payments under this Agreement. Upon execution of the documents and payment of the Option Price and Host’s receipt of title to the System, in each case as described in the preceding sentence, this Agreement shall terminate automatically. In the event Host retracts its exercise of, or does not timely confirm the Purchase Option, the provisions of this Agreement shall be applicable to the next Purchase Date.

(b) In the event that Provider becomes subject to a bankruptcy, insolvency, reorganization, or receivership proceeding, Provider hereby irrevocably consents to relief from any otherwise applicable stay or injunction in order for Host to (i) submit notice to the Provider pursuant to this Section, (ii) exercise the Purchase Option and if applicable the proceeds of which will be provided to Lender, or (iii) otherwise effectuate its rights under this Section. Provider hereby covenants and agrees not to oppose any relief from an otherwise applicable stay or injunction that Host may seek in order to exercise the Purchase Option pursuant to this Section. Provider acknowledges and agrees that, in the event Provider becomes subject to a bankruptcy, insolvency, reorganization, or receivership proceeding, Host’s right to exercise the Purchase Option shall constitute cause for granting such relief, including, without limitation, “cause” within the meaning of section 362(d) of title 11 of the United States Code.

2.3 Determination of Fair Market Value. The Fair Market Value of a System or Solar Services, as applicable, shall be determined by the mutual agreement of Host and Provider; provided, however, if Host and Provider cannot mutually agree to a Fair

Market Value within ten (10) days of the need to determine Fair Market Value pursuant to this Agreement, then the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value 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.

- 2.4 Removal of System at Expiration or Termination. Subject to Host's exercise of its Purchase Option under Section 2.2, upon the expiration or earlier termination of this Agreement according to its terms, Provider shall remove all of its tangible property comprising the System from the Property, on a mutually convenient date as soon as possible for Provider, using Provider's commercially reasonable efforts, but in no case later than one hundred twenty (120) days after the Expiration Date. Any such removal shall be done in a way that does not materially disrupt or interfere with Host's business operations on the Property. The Property shall be returned by Provider to its original condition, except for System mounting pads or other support structures and ordinary wear and tear. In no case shall Provider's removal of the System affect the integrity of Host's Property. Provider shall pay all costs for the removal of the System pursuant to this Section 2.4. For purposes of Provider's removal of the System, Host's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System. Provider shall leave the Property in neat and clean order. If Provider fails to remove or commence substantial efforts to remove the System by such agreed upon date, Host shall have the right, at its option, and upon prior written notice, to remove the System to a public warehouse and restore the Property to its original condition (other than System mounting pads or other support structures and ordinary wear and tear) all at Provider's cost.
- 2.5 Provider's Conditions of this Agreement Prior to Installation. The following are conditions of this Agreement that, if not met prior to commencement of the Installation Work on the System, will, at Provider's election, permit Provider to terminate this Agreement pursuant to Section 2.7 ("Provider Conditions Precedent"):
- (a) There is a suitable electrical interconnection point of sufficient capacity to accommodate a System as designed located within 500 feet of the planned location of a System as described in Schedule 1 of the Appendix;
 - (b) For any underground placement of electrical cable or conduit, there are no rocks or other obstructions that would prevent ordinary trenching equipment to be used for the installation of underground electrical cable from providing a trench of sufficient depth to comply with National Electrical Code;
 - (c) There exist at the time that installation commences no other known site conditions or construction requirements that would materially increase the cost of Installation Work or would adversely affect the electricity production from a System as designed;

- (d) A rebate or subsidy in the amount required by Provider for applicable financing is available to Provider from the State, local utility, or other source for the installation of the System and confirmation that Provider will obtain all Tax Attributes;
- (e) There is no material adverse change in the subsidy program or federal tax code after the Effective Date and prior to the commencement of installation of the solar photovoltaic system that would adversely affect the economics of the installation for Provider and/or its Lender(s);
- (f) The System Permits are available on terms reasonably satisfactory to Provider;
- (g) Receipt of all necessary zoning, land use and building permits;
- (h) There is no material adverse change that affects the creditworthiness of Host;
- (i) Execution of all necessary agreements for interconnection to the applicable electric distribution system;
- (j) Such other Provider Conditions Precedent as may be set forth in Schedule 2 of the Appendix as additional Provider Conditions Precedent for a particular System; and
- (k) No Change in Law has occurred that makes Provider a “public utility” in performing its obligations under this Agreement.

2.6 Host’s Conditions of this Agreement Prior to Installation. The following are conditions precedent of this Agreement that must be met prior to commencement of the Installation Work on the System, and that, if not met, at Host’s election, permit Host to terminate this Agreement pursuant to Section 2.7 (“Host Conditions Precedent”):

- (a) Host has reviewed all Installation Work construction plans, including lists of System equipment and engineering evaluations of the System and has received all corporate approvals then required to commence with the Installation Work;
- (b) Provider has delivered to Host current certificates of insurance or proof of qualified self-insurance evidencing that Provider has obtained the insurance required under Section 18 applicable to the System;
- (c) Execution of all necessary agreements for interconnection to the applicable electric distribution system; and
- (d) Provider has delivered to Host evidence that Provider has obtained all Governmental Approvals, including without limitation, all System Permits, necessary for Provider to legally begin the Installation Work of the applicable System.

- (e) Host has obtained the requisite approval for eligibility for the Net Metering benefits referenced in Section 5.5.

2.7 Right to Terminate this Agreement. In addition to any other termination rights of a Party set forth herein:

- (a) At any time after the two (2) year anniversary of the Effective Date, Host may require that Provider certify within sixty (60) days of notice from Host that all of the conditions precedent set forth in Section 2.5 have been met or waived. If Provider cannot or does not so certify as the result of delays in securing necessary utility of governmental approvals, Host may grant Provider a grace period of an additional six (6) months to certify that all of the conditions precedent set forth in Section 2.5 have been met. At the end of any such grace period or if no grace period is granted, Provider or Host may terminate this Agreement without liability to either party. Termination pursuant to this portion of Section 2.7(a) shall relieve Host from any further obligations under this Agreement with regard to the System, including but not limited to the obligation to pay an Early Termination Fee.
- (b) If Provider (with Host's assistance to the extent reasonably necessary) is unable after good faith effort to reserve a rebate or subsidy in an amount required by Provider for applicable financing, said rebate or subsidy being made available from the state, local utility or other source for the installation of the applicable System as designed, or if any of the conditions in Section 2.5 are not met, Provider has the unilateral right to terminate this Agreement upon written notice to Host; provided that in the case where the Installation Work has been initiated or substantially completed, Provider shall promptly after such termination, at Provider's expense, remove any and all System infrastructure or components within the timeframe specified in Section 2.4. Such termination shall be without liability to either Party.

3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work.

- (a) Host hereby grants to Provider an Access License for access to and use of portions of the Property upon which to locate the System. Provider will cause the System to be designed, engineered, installed, operated and constructed substantially in accordance with the terms of this Agreement. Host shall have the right to review all construction plans, including engineering evaluations of the impact of the System on the then current Local Electric Utility's equipment and service.
- (b) Provider shall provide the project management and construction management services for the System as described in the System Description as defined in Schedule 2 of the Appendix. Provider shall (a) maintain a qualified and competent organization as necessary to perform the Installation Work in the applicable System Description, (b) maintain the System Site reasonably clear of debris, waste

material, and rubbish, (c) use only the entrance(s) described in the applicable System Description for ingress and egress of all personnel, equipment, vehicles, and materials, and (d) otherwise perform the Work in accordance with the applicable System Description, including any limitations contained therein. Host shall have the right at all times to review Provider's work on the System to determine if Provider is in compliance with the applicable System Description and Host's policies and procedures. If Host determines in its reasonable discretion that Provider is not in compliance with the System Description or Host's policies and procedures, the parties shall work together in good faith to remedy such issues. If the parties are unable to agree upon a mutually satisfactory resolution to any such issues, then Host may contract with a third party to review the issues and determine the appropriate resolution of such issues. Provider shall bear the cost for such third party review only if such third party determines that Provider has materially deviated from the System Description.

- (c) Provider may elect to have the Work performed or provided by contractors or subcontractors engaged by Provider. To the extent Provider elects to cause any contractor or subcontractor to perform or provide any of the Work, Provider shall remain fully liable for the performance of such Installation Work and such delegation shall not relieve Provider from any of Provider's obligations or liabilities under this Agreement.
- (d) No work shall commence prior to the passage of local legislation authorizing the Host to enter into a lease of Host's land for a term longer than five (5) years.

3.2 Approvals; Permits.

- (a) Provider shall obtain all necessary approvals from the Local Electric Utility, including the submission of applications for interconnection of the System with the Local Electric Utility. Host shall provide commercially reasonable assistance to Provider in obtaining necessary approvals from the Local Electric Utility and the necessary local Governmental Approvals for the System in accordance with Section 7.1 and Section 7.2, which may include provision by Host of electrical drawings and structural drawings for the Property. If prior to the commencement of Installation Work, any applicable Governmental Authority fails to provide the necessary Governmental Approvals or permits, Provider may, at the Provider's option, terminate this Agreement within ten (10) business days following Provider's receipt of such notification that the application for permits have not been accepted or that necessary Governmental Approvals have been denied. The failure of Provider to obtain any required Governmental Approval shall not constitute a Provider Default, so long as Provider has diligently sought such Governmental Approval. Upon such termination by Provider, Host shall have no obligation to pay an Early Termination Fee.(b) If the Local Electric Utility fails to approve the interconnection of the System or requires equipment in addition to that shown in Schedule 2 of the Appendix, Provider may, at Provider's

option, terminate this Agreement within ten (10) business days following Provider's receipt of such notification from the Local Electric Utility. If Provider elects not to terminate this Agreement pursuant to this Section 3.2, Host, at its sole cost and expense, shall make necessary repairs or changes to the existing electrical structure of the Property required by the Local Electric Utility or any state inspection for interconnection of the System,. If such repairs or changes to the existing electrical structure of the Property are only required for purposes of interconnection of the System, then Provider shall have the option to re-engineer the System, at Provider's sole expense, in a manner that satisfies the Local Electric Utility and/or Governmental Authority requirements for interconnection of the System. If such re-engineering cannot be accomplished for the System on the Property, then Provider and Host shall explore, in good faith, the relocation of the System to an alternative Host site where interconnection of the system with the Local Electric Utility can be accomplished in a timely manner without cost to the Host. If no such alternative Host site can be agreed upon by the Parties, then Host may, in its sole discretion, terminate this agreement without cost or liability.

3.3 System Acceptance Testing

- (a) Provider shall conduct testing of the System ("System Acceptance Testing"). Provider shall notify Host not less than three (3) Business Days prior to the anticipated date of System Acceptance Testing. Host shall have the right, but not the obligation, to be present at and observe the System Acceptance Testing, at Host's sole cost.
- (b) If (i) the System is substantially complete, interconnected with the electric system of the Property and, if applicable, with the system of the Local Electric Utility in accordance with Applicable Law and the rules of the Local Electric Utility, (ii) Provider has accepted such System from its equipment suppliers and installers, (iii) the results of the System Acceptance Testing, attached hereto as Schedule 3 of the Appendix, establish that the System is installed and operating in accordance with all manufacturer's specifications and applicable laws, regulations and permit requirements (the "System Test Procedures"), and using such instruments and meters as have been installed for such purposes, and (iv) the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice to that effect to Host (a "Completion Notice"), accompanied by a copy of the results of the System Acceptance Testing.
- (c) The "Commercial Operation Date" shall be the date of Host's receipt of a Completion Notice.

3.4 Solar Access License. Host shall provide commercially reasonable assistance to Provider in securing a solar access license to prevent overshadowing of the System and subsequent reduction in System electricity production. At Provider's request and expense, Host will use commercially reasonable efforts to secure an easement for the System to prevent other buildings, structures or flora located off of the Property from

overshadowing or otherwise blocking access of the sunlight to the System if under Applicable Law the filing of a recorded instrument will create such easement without undue burden to Host.

- 3.5 Host will provide Provider with a working Ethernet connection to intranet and/or internet network(s), in the area of electrical equipment, in order to enable Provider to remotely monitor the System's energy production.

4. SYSTEM OPERATIONS.

- 4.1 Provider as Owner and Operator. The System will be owned and operated by or for Provider at its sole cost and expense. "System Operation" means all actions, including monitoring and maintaining a System, necessary for Provider to fulfill its covenants under this Agreement. Any repair or maintenance of a System will be promptly completed by or for Provider, at its sole cost and expense, for Provider's benefit as legal and beneficial owner of a System, to the extent that such repair or maintenance is not directly attributable to the negligence or willful misconduct of Host. The Parties intend this Agreement to be treated as a "service contract" within the meaning of section 7701(e)(3) of the Internal Revenue Code

4.2 Malfunctions and Emergencies.

- (a) Host and Provider each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services. Provider and Host shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Provider's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Provider and Host each shall use best efforts to notify the other Party upon the discovery of an emergency condition in the System. The above notwithstanding, Host shall have no obligation to inspect, monitor, operate or repair the System.
- (b) If an emergency condition exists at the System or Property, Provider shall immediately dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner. For routine and emergency repairs, Host shall contact Provider using contacts for each listed in attached Schedule 6 of the Appendix.

4.3 Metering.

- (a) Maintenance and Testing. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy provided by the System. Upon Host's written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for the meter and Provider shall test the System's meter upon Host's reasonable request.

- (b) Adjustments. If testing of the metering equipment pursuant to Section 4.3(a) indicates that such equipment is in error by more than two percent (2%), then Provider shall promptly repair or replace such equipment at its sole cost and expense. Provider shall make a corresponding adjustment to the records of the amount of electrical energy provided by the System delivered based on such test results for (i) the actual period of time when such error caused inaccurate meter recordings, if that period can be determined to the mutual satisfaction of the Parties, or (ii) if such period cannot be so determined, then a period equal to one-half of the period from the later of the date of the last previous test confirming accurate metering or the date the meter was placed into service, but not to exceed one (1) year. If testing is pursuant to Host's request in Section 4.3(a) and testing indicates the equipment is in error by two percent (2%) or less, Host shall be responsible for the costs of the testing.

- 4.4 Interconnection Agreement. Host shall enter into an Interconnection Agreement with the Local Electric Utility in connection with the installation and operation of the System, subject to the provisions of Section 2.7(a). Host shall maintain in effect and fully perform any and all obligations under the Interconnection Agreement, including but not limited to all required amounts payable and due under the Interconnection Agreement ("Host's Interconnection Obligations"). If an interconnection with the Local Electric Utility becomes deactivated such that the System is no longer able to produce energy or deliver energy to the Delivery Point for reasons that are not: (i) a Force Majeure Event; or (ii) caused by or related to any unexcused action or inaction of Provider, Host will pay Provider any Losses (including lost revenues hereunder) associated with the period of such deactivation.

5. DELIVERY OF SOLAR SERVICES.

- 5.1 Purchase Requirement. During the Term, Host agrees to purchase during each month, one hundred percent (100%) of the Solar Services of the System whether or not Host is able to use or net meter the Energy generated and delivered by the System. The Solar Services are calculated and billed on a per kWh basis at the kWh Rate. The payment for Solar Services is calculated to include all of the Solar Services in the kWh Rate. Provider shall deliver all Energy generated by the System on a real time basis to Host at the Delivery Point for the System as demarked in the system drawing (the "Delivery Point").

5.2 Environmental Attributes, Tax Attributes, And Other Incentives.

- (a) During the Term of this Agreement, Provider will retain right and ownership of all Environmental Attributes produced by the System and all revenues generated by the sale thereof.
- (b) For purposes of this Agreement, "Environmental Attributes" means any and all environmental credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, including but not limited to, Carbon Credits, Portfolio credits, RECs, any other renewable energy credits or certificates, emissions reduction

credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products, credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of the energy by the System and the delivery of the energy, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early actions” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, and any other reward or incentive given for the use and/or production of Solar power. Environmental Attributes excludes any Tax Attributes.

- (c) Provider, or its designee or assignee, shall retain and be entitled to all tax and investment attributes of the energy provided as part of the Solar Services, which shall include any local, state or federal investment or production tax credits, depreciation deductions or other tax benefit to Provider based on the ownership of, or energy production from any portion of the System, including the production tax credit, investment tax credit and any depreciation and other tax benefits arising from ownership or operation of the System unrelated to its status as a generator of renewable or environmentally clean energy (collectively, and as supplemented by mutual agreement in the future, the “Tax Attributes”). Upon Provider’s request and documentation as to the need therefore, Host shall timely execute documents prepared by Provider and shall take actions necessary under Applicable Law or other requirements to cause the Tax Attributes to vest in Provider, without further compensation, including, but not limited to, all actions necessary to register or certify the Tax Attributes or the System with the Governmental Authorities or any other Person, as specifically requested by the Provider in writing; provided, however, that in no case shall Host be required to execute any document or take any other action having a material adverse effect on Host, Host’s Property Usage, or Host’s business, in Host’s sole judgment. If requested by Host, Provider will prepare, or assist in preparing all documents necessary for Host to comply with the foregoing sentence.
- (d) This Section 5.2 shall not function or be construed as, or represent a performance or production guaranty, or representation, warranty or covenant with regard to, the System or the amount of Energy or quantity of Environmental Attributes created by the System.

5.3 Title to System and Property.

- (a) As between the Parties, the System shall at all times retain the legal status of personal property within the meaning of Article 9 of the Uniform Commercial Code and applicable real property law, throughout the duration of this Agreement and thereafter, Provider or Lender or their successors or permitted

assigns shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Lender, their successors or permitted assigns and the System shall not attach to or be deemed a part of, or fixture to, the Property. Host covenants that it will not (i) assert or affirmatively claim or represent in any agreement or contract that the System is not personal property or is not owned by Provider or Lender, their successors or permitted assigns, or (ii) enter into any security agreement or similar document that specifies the System as being part of the collateral for the lien or security interest therein. If there is any mortgage or fixture filing against the Property which could reasonably be construed as prospectively attaching to the System as a fixture of the Property, Host shall, at Provider's request, provide to such lien holder a statement that the Parties have agreed that the System is personal property and is property of the Provider or Lender, their successors or permitted assigns, and shall obtain an acknowledgment from the lien holder that the lien holder does not have a lien on or security interest in the System or that it subordinates its mortgage to the Provider's and Lenders' (and their successors' and assigns') rights under this Agreement. Host consents to the filing of a disclaimer of the System as a fixture of the Property and/or a precautionary fixture filing in the office where real estate records are customarily filed in the jurisdiction of such Property. Host is not making any representation about the legal characterization of the System as personal property under any law.

- (b) Throughout the duration of this Agreement, Host shall be the legal and beneficial owner of the Property at all times, and the Property shall remain the property of Host and shall not be deemed a part of any System. Pursuant to Section 5.3(a), Provider shall file a disclaimer of the System as a fixture of the Property in the office where real estate records are customarily filed in the jurisdiction of such Property to place all interested parties on notice of (i) the ownership of such Property by Host and (ii) the ownership of such System by Provider. If there is any financing statement, mortgage or fixture filing against any System which could reasonably be construed as prospectively attaching to any Property, other than the disclaimer filings consented to by Host pursuant to Section 5.3(a), Provider shall provide a disclaimer or release from such lien holder.
- (c) Title to and risk of loss related to the Energy from the System shall transfer from Provider to Host at the Delivery Point for such System. Provider warrants that it will deliver to Host all Solar Services free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person, other than those of Provider or such Affiliates of Provider to which this Agreement is assigned and that arise from or are made subject to the rights and/or obligations of the Parties to this Agreement, and other than a security interest or lien created by or attributable to Host.

5.4 No Obligation to Operate. Subject to Section 5.1 above, Host shall not be obligated to operate any Property or to maintain any level of Energy consumption at any Property. Nothing in this Agreement shall preclude Host from undertaking any measures which

reduce Energy consumption at the Property such as energy efficiency measures, changes in the use of the Property, closure of any Property or installation of other sources of on-site generation. Host makes no representation or warranty in relation to any historical data concerning energy usage at any Property or the levels of Solar Insolation at any Property. Notwithstanding this Section 5.4, Host shall be obligated to pay for any and all Solar Services and Energy generated from the System (as measured by the Billing Meter) regardless of any reduced energy load to the Property.

5.5 Net Metering. Host may make arrangements so that electricity in excess of Host's requirements may be delivered to the Local Electric Utility at the interconnection point and Host shall be permitted to retain any credits or payments from the Local Electric Utility that may be available under net metering or similar programs, to the extent permitted under Applicable Law. Provider shall act as agent of Host to facilitate Host's receipt of payments or benefits under such net metering or similar programs.

(a) The Parties acknowledge that the System is intended to qualify as a net metering facility of a municipal government or its affiliated organizations, as described in New York Public Service Commission regulations, as such regulations may be amended from time to time, and the Parties agree not to take any action inconsistent with the System's status as such a facility except as otherwise required by Applicable Law.

(b) Each Party shall use commercially reasonable efforts to cooperate and assist each other in amending this Agreement to conform to any applicable rule(s) or regulation(s) regarding net metering and ensure that the System is eligible for net metering as a net metering facility of a municipal government or its affiliated organizations.

6. PRICE AND PAYMENT.

6.1 Consideration. Subject to Section 6.4, Host shall pay to Provider a monthly payment (the "Solar Services Payment") for the Solar Services produced by the System equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate. The sum of all Solar Services Payments paid (and remaining to be paid) during the Term, as adjusted pursuant to Section 6.4, shall be the "Contract Price" under this Agreement. At any given time during the Term, the applicable Early Termination Fee (Termination Value) as set forth in Column 1 of Schedule 5 of the Appendix shall be deemed to cover the Contract Price in full. Except as may be otherwise expressly provided in this Agreement, no other fees or charges shall be due from Host to Provider.

6.2 Payment. With respect to the System, Provider shall invoice Host monthly on or before the second Business Day of each calendar month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date of the System, for the Solar Services Payment due for such month. The first invoice shall include any Solar Services that occurred during the prior calendar month(s). The last invoice shall include Solar Services only through the Expiration Date of this

Agreement. Each invoice to Host shall be in the form of Exhibit D attached hereto. Each invoice shall be accompanied by a computation of the actual deliveries for the month and the amount that is owed for such deliveries at the kWh Rate.

- 6.3 Rebate Deposit Refunds. Where Provider reserves a utility rebate by making a refundable deposit to a utility on Host's behalf, Host shall refund such rebate deposit to Provider upon payment of such deposit by the utility to Host.
- 6.4 Time of Payment. Host shall pay all undisputed amounts due hereunder in respect of Solar Services Payments within thirty (30) days after the receipt of the invoice for the applicable Invoice Date. Each Party shall pay all other undisputed amounts due hereunder within thirty (30) days after receipt of an invoice therefore, in the form specified in Exhibit D attached hereto, accompanied by reasonable documentation of the amount due.
- 6.5 Method of Payment. Each Party shall make all payments under this Agreement by (i) electronic funds transfer in immediately available funds; or (ii) paper check to the account designated by Provider or Host, as the case may be and as updated from time to time by such Party. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except as provided in Section 6.4 and Section 6.6, all payments made hereunder shall not be subject to reduction, withholding, set-off, or adjustment of any kind. Upon receipt of written direction and instructions from Provider and Provider's Lender, all payments to be made by the Host to the Provider under this Agreement shall be made directly to the Lender or its agent designated in a writing addressed to Host from time to time, unless or until otherwise directed by Provider in writing.
- 6.6 Payment Disputes. If a Dispute arises with respect to any invoice submitted or any payment owed by one Party to the other Party hereunder, the Parties shall attempt to resolve such Dispute amicably. Each party shall have the right to audit the records of the other party but only with regard to such records and only to the extent necessary to verify the amount or accuracy of payments owed by one Party to the other Party hereunder. If the Parties cannot resolve the Dispute within thirty (30) days, either Party may submit the Dispute to legal proceedings in accordance with Section 12 below; provided that, during the time a Dispute is pending, the disputing Party shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. No Party may withhold, deduct or set-off against amounts or credits owed by such Party to the other Party any amounts during the time that a Dispute is pending. Host agrees not to dispute invoices except in good faith and upon reasonable grounds. If any dispute as to the accuracy of an invoice is resolved in favor of Provider, Host will promptly pay the full amount thereof with interest accruing thereon at the Stated Rate from the date on which such payment was originally due.
- 6.7 Local Electric Utility Bills. Upon Provider's request, Host shall authorize the Local Electric Utility to send to Provider duplicates of any bills sent to Host. In the event that the Local Electric Utility does not permit such duplicate bills to be sent to Provider,

Host shall, promptly upon receipt of the bill, forward such bill to Provider. All information provided to Provider shall be considered to be confidential information that is subject to the requirements of Section 16.1 below.

7. GENERAL COVENANTS.

7.1 Provider's Covenants. As a material inducement to Host's execution and delivery of this Agreement, Provider covenants and agrees to the following:

- (a) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating as per System specifications and manufacturer's warranties. Provider shall, at its expense, maintain the System in accordance with Prudent Industry Practices, manufacturer's requirements and warranty guidelines and Applicable Law. Provider shall use reasonable efforts to restore the System promptly after any material interruption, provided that the Parties hereto acknowledge that the Lender or its agent will be the loss payee on casualty/property insurance with respect to the System and will have the right to apply the proceeds thereof in accordance with the financing arrangements between it and Provider. If the System remains inoperable or operates at a reduced efficiency and cannot be restored within three (3) Business Days, Provider shall provide Host with a plan describing the actions that it intends to take to cure the outage.
- (b) Governmental Approvals. Provider will be responsible for procuring and maintaining all Governmental Approvals required for performance of the Solar Services, System Operations and the other Work (collectively, "System Permits") including all environmental, conditional use, and zoning permits or any other permits, licenses, authorizations or other rights, whether or not the System Permits must be held by Provider or Host, except as otherwise provided under Section 4.4 in respect of Host's Interconnection Obligations. Provider will be responsible for preparing all applications and other permit materials necessary for any System Permits. Provider will submit such materials to the applicable Governmental Authorities (in Host's name if required; provided, however, that (i) Host has reviewed and consented to such submittal, and (ii) in no case shall Provider submit materials in Host's name which would, in Host's sole judgment, have a material adverse effect on Host, Host's Property Usage, or Host's business) and, at Provider's expense, procure such System Permits. System Permits exclude Governmental Approvals relating to or necessary for the occupancy of the Property (other than those required in connection with the applicable System) ("Host Permits"), which Host shall be required to obtain at its sole cost and expense. The cost of all System Permits shall be included in the Contract Price. Provider shall provide any design documents and permit applications and other materials that are necessary to obtain System Permits that must be held in Host's name to Host for review. Host shall provide any comments to such design documents and permit materials within ten (10) Business Days after submittal and, if deemed acceptable by Host in Host's sole

judgment, Host shall execute the applications so that Provider may secure the System Permits.

- (c) System Repair and Maintenance. During the Term, Provider will operate and perform all routine and emergency repairs to and maintenance of the System. Provider shall maintain, inspect, service, repair, overhaul and test the System in accordance with (i) all maintenance manuals furnished with the System, as amended, (ii) all mandatory or otherwise required service bulletins issued by or through the manufacturer and/or the manufacturer of any part of the System, and (iii) all directives applicable to the System issued by the Local Electric Utility or similar regulatory agency having jurisdictional authority, and causing compliance to such directives to be completed in a timely manner through corrective modification in lieu of operating manual restrictions. Provider shall maintain all records, logs and other materials required by the manufacturer for enforcement of any warranties or by the Local Electric Utility or any Governmental Authority. All maintenance procedures required hereby shall be undertaken and completed in accordance with the manufacturer's recommended procedures, and by properly trained, licensed, and certified maintenance sources and maintenance personnel, so as to keep the System and each System component in as good operating condition as when delivered to Host hereunder, ordinary wear and tear excepted. Without limiting Section 17.2, Host shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper operation or maintenance of the System.
- (d) Use of Contractors and Subcontractors. Provider shall be permitted to use experienced and reputable contractors and subcontractors to perform its obligations under this Agreement. However, Provider shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.
- (e) Control and Operation of System. Provider accepts full operational control of the System. Provider agrees that the System will be used and operated: (i) in compliance with any and all statutes, laws, ordinances, regulations and standards or directives issued by any Governmental Authority or Local Electric Utility applicable to the use or operation thereof; (ii) in compliance with any certificate, license, registration, permit or authorization relating to the System issued by any Governmental Authority or Local Electric Utility; (iii) in compliance with all safety and security directives of each Governmental Authority and the Local Electric Utility; and (iv) in a manner that does not modify or impair any existing warranties on the System or any part thereof.
- (f) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws and Prudent Industry Practices pertaining to the health and safety of persons and real and personal property. Provider shall immediately report to Host any death or lost time injury that occurs on the Property, or property damage to Host's property.

- (g) Liens. Other than Lender's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Property or any interest therein. Provider also shall pay promptly before a fine or penalty may attach to any Property any Taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Provider or its agents and subcontractors on the Property. In the event that a claim is made or a Lien is imposed on the Property by any contractor, subcontractor or third party arising out of work in connection with a System, Provider shall have the obligation immediately to notify Host in writing, and (i) defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such claim or Lien, and (ii) (A) either to make such payment as necessary to discharge the claim or Lien within thirty (30) days or (B) at Provider's sole cost, challenge the validity of the claim or Lien and post a bond reasonably acceptable to Host in an amount equal to at least 125% of the amount of such claim or Lien.
- (h) No Infringement. The System and Provider's services hereunder, including the Installation Work, Solar Services and System Operations, shall not infringe any third party's intellectual property or other proprietary rights.
- (i) Hazardous Materials. Provider shall be responsible for the identification (including applicable inspection and notification requirements), cleanup, removal, remediation and disposal in accordance with Applicable Law of any Hazardous Materials (a) brought to the Property by Provider or its employees, representatives, agents or contractors or (b) generated or otherwise created in connection with the Solar Services or a System. Provider shall also notify the Host prior to delivery of any known Hazardous Material to the Property.
- (j) Communications. Provider's Operating Representative shall be available to Host to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour, seven (7) day per week basis. The name and contact information of the Provider's Operating Representative is defined in Schedule 2 of the Appendix.
- (k) Warranties. Provider shall secure warranties from its equipment suppliers and all installers that are assignable to Host upon the purchase or acquisition of the System by Host. Provider shall assign all assignable warranties to Host upon Host's request in connection with a sale or transfer of the System to the Host. Provider shall obtain industry standard manufacturer's warranties for any and all modules or components used in the System.

7.2 Host's Covenants. As a material inducement to Provider's execution and delivery of the Agreement, Host covenants and agrees as follows:

- (a) Health and Safety. Host shall at all times maintain the Property consistent with all Applicable Laws pertaining to the health and safety of persons and property.
- (b) Security. Host shall provide Host's usual and customary level and type of security at the Property against access by unauthorized persons, including Host's usual and customary monitoring of all of the Property's alarms, but shall not be responsible for the maintenance, inspection or monitoring of the System or the protection of the System against casualty, Force Majeure Events or other events caused by persons not under Host's control.
- (c) Identification of Equipment. Host agrees, at Provider's request, to (i) permit Provider to prominently label the System as Provider's personal property, (ii) not disturb, remove or obscure, or permit any person other than Provider to disturb, remove or obscure such labeling, and (iii) permit Provider to replace promptly any such labeling which may be disturbed, removed or obscured.
- (d) Alterations. Except as provided in Section 11.1(c) below, Host shall not make any alterations or repairs to the Property which may adversely affect the System or its access to Insolation without Provider's prior written consent. If Host wishes to make such alterations or repairs, Host shall give prior written notice to Provider, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Provider the opportunity to advise Host in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Host shall be responsible for all damage to the System caused by Host or its contractors. All of Host's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits. Except as expressly permitted under this Agreement, Host will not modify the System or affix or remove any accessory to the System. If Provider provides prior written consent to Host to perform an alteration or repair pursuant to this Section 7.2(d), and the delivery of Solar Services is reduced when compared to the Benchmark Production amounts specified in Schedule 7 for any period of time during the performance of such alteration or repair work, Host shall pay Provider: (1) the applicable kWh Rate for the pro-rata expected generation that would have been produced during such period, according to the monthly Benchmark Production amounts specified in Schedule 7 of the Appendix; and (2) the Fair Market Value of any Environmental Attributes related to such pro-rata expected generation, as reasonably determined by Provider. Notwithstanding anything herein to the contrary, in no event shall Host be permitted to make any alteration or repair to the Property such that it causes an impairment to the Tax Attributes.
- (e) Notice of Damage. To the extent of the actual knowledge of Host, Host shall immediately notify Provider of any damage to or loss of the use of the System or damage to the Property that could reasonably be expected to result in physical damage to the System or reduction in Energy output.

- (f) Liens. Host shall not directly or indirectly cause or create any Liens on or with respect to the System or any interest therein. If Host breaches its obligations under this Section 7.2(f), it shall immediately notify Provider in writing, shall immediately cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.
- (g) Access to Property, Grant of License. Host hereby grants Provider (and its Lenders, their successors and assigns, and their employees, contractors and subcontractors) a royalty-free, irrevocable license to site, construct, install, operate, maintain, use, repair, alter and remove the System on the site specified on the attached Schedule 1 of the Appendix, to access the System from, over or across the Property and access the Property from a public road or access route, as reasonably necessary, during the Term of this Agreement and for so long as needed after termination, to allow Provider to perform the Installation Work (without limiting the indemnification provisions in Article 17), System Operations and System removal, including ingress and egress rights to the Property for Provider and its employees, Lenders, and its and their contractors and sub-contractors, and access to electrical panels and conduits to interconnect or disconnect the System with the applicable Property's electrical wiring (the "Access License"). The Access License shall not be revoked or terminated by the Host unless the Host is terminating the Agreement for a Provider Default. The Access License shall give Provider an exclusive right to the footprint where the System is located (as described in Schedule 1 of the Appendix) and a non-exclusive right to the other portions of the Property as provided above, provided that Provider's use of the Property shall not interfere with Host's normal operations on the Property (collectively, "Host's Property Usage"). Host and its authorized representatives shall at all times have access to and the right to observe the Installation Work or System removal but shall not interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, in the event of a material malfunction or emergency as specified in Section 4.2, Host shall be permitted to take those actions necessary to prevent injury as specified in Section 11.1(c). Host covenants that Provider's use and operation of the System shall not be disturbed or interfered with during the Term, subject only to the rights of Host under Sections 4.2 and 11.1(c). Upon request by Provider, the Parties shall execute and Provider shall at its sole cost and expense record with the appropriate office where real estate records are customarily filed in the jurisdiction of such Property, a Memorandum of Access License in the form attached as Exhibit C with additional limitations to be proposed by Host and its counsel in his or her reasonable discretion upon final engineering for the System; provided, however, that such Access License must be at least sufficient for Provider to perform its obligations under this Agreement.
- (h) Temporary storage space during installation or removal. The System Description shall describe any space required for the temporary storage and

staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations or System removal, and access for rigging and material handling. Host shall use reasonable efforts to provide Provider with the described spaces.

- (i) Host shall trim all foliage on the Property, to the extent permitted by Applicable Law or regulation, such that there is no material adverse effect on the insolation level from such foliage (as compared to the insolation level on the Commercial Operation Date).

8. WARRANTIES.

8.1 Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation 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;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein;
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and
- (g) all information provided by one Party to the other Party is accurate in all material respects.

8.2 Change in Law; No Regulation as Electric Utility. If there is any Change in Law subsequent to the Effective Date (including any such change related to Customer's ability to net meter energy from the Delivery Point) this Agreement shall remain in

- effect, and the Party affected shall be responsible for the burden and/or shall be permitted to retain the benefit of such Change in Law; provided, however, that nothing herein shall prevent the Parties from negotiating, in good faith, modifications to this Agreement in response to a Change in Law. Neither Party shall assert that the other Party is an electric utility subject to regulation by any Governmental Authority as an electric utility or subject to regulated electricity rates, solely as a result of either Party's performance under this Agreement. Notwithstanding the foregoing, if a Change in Law or a determination by a Governmental Authority with jurisdiction to make such determination causes either Party to be an electric utility subject to regulation by any Governmental Authority, then the Parties shall use best efforts to restructure their relationship under this Agreement in a manner that substantially preserves their relative economic interests while ensuring that neither Party becomes subject to any such regulation.
- 8.3 Requisite Standards. The System shall be constructed, installed and maintained with due care by qualified employees, representatives, agents or contractors of Provider and shall conform to Prudent Industry Practices and Applicable Law (including Environmental Law). If Provider fails to meet any of the foregoing standards, Provider shall, at its own cost, and without additional charge to Host, take any corrective actions, including any necessary replacement of the System, that are caused by Provider's failure to comply with the above standard.
- 8.4 Host as Governmental Entity. Pursuant to New York Energy Law § 9-103(2), This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract. Notwithstanding the foregoing, as Host is a municipality or other governmental entity, (i) Host represents and warrants that payments hereunder (including payment of the Early Termination Fee) are not subject to appropriations, (ii) Host covenants that, in the event any payment hereunder (including payment of the Early Termination Fee) is or becomes subject to any necessary appropriation, Host shall use its best efforts to appropriate the funds necessary to satisfy such obligations, and not to discriminate between such obligations and its other obligations with respect to payments for necessary services, (iii) any failure of Host to make payment as a result of any non-appropriation shall constitute a Host Default, (iv) Host waives, to the fullest extent permitted by Applicable Law, any claim for sovereign immunity associated with any liability hereunder, and (v) Host represents and warrants that it has fully complied with all procurement, public bidding and municipal contracting requirements under Applicable Law.
- 8.5 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE INSTALLATION WORK, SYSTEM OPERATIONS, AND SOLAR SERVICES PROVIDED BY PROVIDER TO HOST PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO HOST OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR

STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

HOST MAKES NO REPRESENTATION OR WARRANTY AS TO THE LEVEL OF PAST, PRESENT OR FUTURE ENERGY CONSUMPTION AT THE PROPERTY. NOR SHALL ANY PROVISION OF THIS AGREEMENT REQUIRE HOST TO CONTINUE TO OPERATE THE PROPERTY OR RESTRICT HOST'S RIGHTS TO SELL, LEASE OR DISPOSE OF PROPERTY, PROVIDED THAT HOST COMPLIES WITH THE TERMINATION REQUIREMENTS IN THIS AGREEMENT.

9. TAXES AND GOVERNMENTAL FEES.

- 9.1 Host Obligations. Host shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority ("Taxes") on Provider and paid by Provider arising from Provider's sale of the Solar Services to Host (other than income taxes imposed upon Provider, which shall be the responsibility of Provider). Provider shall notify Host in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Host. Host shall timely report, make filings for, and pay any and all sales, use, income, gross receipts, or other taxes, and any and all franchise fees or similar fees assessed against it due to its lease of the System. Provider shall reimburse Host for any Tax that is the responsibility of Provider but that is imposed upon and paid by Host. This Section 9.1 excludes Taxes specified in Section 9.2.
- 9.2 Other Taxes. Each Party shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of its property (i.e., in the case of the Host, the Property; in the case of the Provider, the System). If Host is assessed any Taxes related to the existence of the System on the Property, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting such assessment; provided, however, that Host shall pay such Taxes to avoid any penalties on such assessments subject to reimbursement by Provider. If, after resolution of the matter, a Tax is imposed upon Host related to the improvement of real property by the existence of the System on the Property, Provider shall reimburse Host for such Tax. Neither Party shall be obligated for any Taxes payable by or assessed against the other Party based on or related to such Party's overall income or revenues.
- 9.3 Minimize Taxes. The Parties shall administer and implement this Agreement with the intent to minimize Taxes. Host shall timely provide to Provider all exemption certificates and other information necessary to evidence any applicable exemption or information otherwise reasonably requested by Provider, and until Host does so Provider shall not be required to recognize any exemption.

10. FORCE MAJEURE.

- 10.1 Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, Force Majeure Event may include, without limitation, the following acts or events: (a) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (b) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (c) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (d) strikes or labor disputes; (e) action by a Governmental Authority, including a moratorium on any activities related to this Agreement; and (f) the impossibility for one of the Parties, despite its best efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement, provided that the delay or inability to obtain such Governmental Approval is not attributable in any manner to the affected Party and that such Party has exercised its best efforts to obtain such Permit. Force Majeure Event does not include: (i) equipment failure (unless resulting from a Force Majeure Event); (ii) acts or omissions of Provider’s subcontractors or agents, except to the extent that such acts or omissions arise from a Force Majeure Event; (iii) changes in costs of services, materials, labor or equipment; (iv) the lack or variation of Solar Insolation (other than as a result of acts or omissions of Host, its contractors or invitees); (v) changes in tax laws or laws relating to Provider’s Tax Attributes; or (vi) economic conditions, such as downturns in the economy, including recessions and depressions.
- 10.2 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, other than the failure to pay amounts due hereunder occurring prior to such Force Majeure Event, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 10 shall immediately (a) notify the other Party in writing of the existence and details of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (d) resume performance of its obligations hereunder as soon as practicable thereafter. If Provider claims relief pursuant to a Force Majeure Event, the obligation of Host to make a Solar Services Payment to Provider on any monthly payment date shall be suspended until the Provider resumes performance of its obligations under this Agreement; provided, however, that Host shall not be excused from making any payments due in respect of Solar Services delivered to Host prior to the Force Majeure Event performance interruption. For the avoidance of doubt, if Provider supplies and delivers Solar Services during a Force Majeure Event, Host shall not be excused from making any Solar Services Payment with respect to such Solar Services.

- 10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has materially affected Provider's performance of its obligations hereunder or has reduced the System production for any consecutive six (6) month period below twenty-five percent (25%) of the applicable monthly Benchmark Production amounts specified in Schedule 7 of the Appendix, then Host or Provider shall be entitled to terminate this Agreement upon thirty (30) days prior written notice to Provider or Host, as applicable. Provider shall have a grace period for procurement of replacement equipment, as long as the need for such equipment is identified in a timely manner. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other, subject to Section 19.6 (Survival). By mutual agreement of the Parties, any System components damaged or destroyed by a Force Majeure Event may be replaced by Provider within the time frames set forth above, and subsequent to replacement and upon commencement of operation of the replacement System components all terms and conditions of this Agreement will remain in effect, including the remaining Term of this Agreement.

11. DEFAULT.

11.1 Provider Defaults and Host Remedies.

- (a) Provider Defaults. The following events shall be defaults with respect to Provider so long as continuing (each, a "Provider Default"):
- i. Provider shall (A) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admit in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) make a general assignment for the benefit of its creditors; (D) become subject to a voluntary or involuntary case under any bankruptcy law, including, without limitation, title 11 of the United States Code; (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Provider in an involuntary case under any bankruptcy law; or (G) take any corporate or other action for the purpose of effecting any of the foregoing;
 - ii. A proceeding or case shall be commenced without the application or consent of Provider in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of Provider under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days;

- iii. Provider fails to pay Host any undisputed amount owed under this Agreement within thirty (30) days from receipt of notice from Host of such past due amount;
- iv. Provider breaches any material term of this Agreement and (A) if such breach can be cured within sixty (60) days after Host's written notice of such breach and Provider fails to so cure, or (B) if a cure can be effected within a longer cure period, Provider fails to commence and pursue said cure within such sixty (60) day period or Provider fails to effect such cure within such longer cure period; and
- v. Any material representation or warranty made by Provider in this Agreement shall prove to have been false or misleading in any material respect when made and (A) if such representation or warranty can be cured or corrected within thirty (30) days after Host's written notice thereof, Provider fails to so cure or correct such representation or warranty, or (B) if such representation or warranty can be cured or corrected within a longer period, Provider fails to commence and pursue such cure or correction within such thirty (30) day period or Provider fails to effect such cure or correction within such longer period or ceases to pursue such cure or correction.

(b) Host's Remedies.

- i. If a Provider Default described in Section 11.1(a)(i) or Section 11.1(a)(ii) has occurred, Host may terminate this Agreement and require Provider, upon notice of termination, to remove the System from the Property in compliance with the timeframe specified in Section 2.4 herein upon at least fifteen (15) days prior written notice to Provider;
- ii. If a Provider Default described in Section 11.1(a)(iii), Section 11.1(a)(iv) or Section 11.1(a)(v) has occurred and is continuing, Host may terminate this Agreement and require Provider, upon notice of termination, to remove the System from the applicable Property in compliance with the timeframe specified in Section 2.4 herein immediately upon the expiration of the respective grace periods set forth in such provisions; and
- iii. If a Provider Default described in Section 11.1(a) has occurred and is continuing, Host may exercise any other remedy it may have at law or equity or under this Agreement and require Provider to immediately remove the System from the Property in compliance with the timeframe specified in Section 2.4 herein.

(c) Actions to Prevent Injury. If any Provider Default creates an imminent risk of damage or injury to any Person or any Person's property or a risk of a violation of Applicable Law, then, in addition to any other right or remedy that Host may

have, Host may (but shall not be obligated to) take such action as Host deems appropriate to prevent such damage or injury or violation of Applicable Law. Such action may include disconnecting and removing all or a portion of the System.

- (d) No termination of this Agreement due to a Provider Default shall limit or waive Host's rights or remedies at law or in equity.

11.2 Host Defaults and Provider's Remedies.

- (a) Host Default. The following events shall be defaults with respect to Host so long as continuing (each, a "Host Default"):
 - i. Host shall (A) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admit in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) make a general assignment for the benefit of its creditors; (D) commence a voluntary case under any bankruptcy law; (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Host in an involuntary case under any bankruptcy law; or (G) take any corporate or other action for the purpose of effecting any of the foregoing;
 - ii. A proceeding or case shall be commenced without the application or consent of Host in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts, or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of Host under any bankruptcy law, and such proceeding or case shall continue undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) or more days;
 - iii. Host breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's written notice of such breach and Host fails to so cure, or (B) if a cure can be effected within a longer cure period, Host fails to commence and pursue said cure within such thirty (30) day period or Host fails to effect such cure within such longer cure period but not to exceed sixty (60) days or ceases to pursue such cure;
 - iv. Host fails to pay Provider any undisputed amount due Provider under this Agreement when due;

- v. Host takes action that adversely affects the System or the Solar Services without Provider's prior written consent, unless such action is permitted pursuant to Section 10 or Section 11.1(c) of this Agreement; and
- vi. Any material representation or warranty made by the Host in this Agreement shall prove to have been false or misleading in any material respect when made and fails to correct the same within thirty (30) days after receipt of written notice from Provider.

(b) Provider's Remedies.

- i. If a Host Default described in Section 11.2(a)(i) or Section 11.2(a)(ii) has occurred, Provider may terminate this Agreement upon at least fifteen (15) days prior written notice to Host.
- ii. If a Host Default described in Section 11.2(a)(iii), Section 11.2(a)(iv), Section 11.2(a)(v), Section 11.2(a)(vi), or Section 11.2(a)(vii) has occurred and is continuing, Provider may terminate this Agreement only immediately upon the expiration of the respective grace periods set forth in such provisions.
- iii. If any Host Default described in Sections 11.2(a) has occurred and is continuing, and this Agreement is terminated with respect to the System: (A) Provider may (i) cease the provision of all Solar Services and (ii) remove the System from the Property in compliance with the conditions of Section 2.4 herein, (B) Host shall pay the Early Termination Fee (Termination Value) with respect to the System as set forth in Schedule 5 Column 1 of the Appendix, and any other sums owed to Provider resulting from unpaid invoices. The amounts described in clause (B) shall constitute full and liquidated damages for Host's Default.

- (c) Actions to Prevent Injury. If any Host Default creates an imminent risk of damage or injury to any Person or any Person's property or violation of Applicable Law, then in any such case, in addition to any other right or remedy that Provider may have, Provider may (but shall not be obligated to) take such action as Provider deems appropriate to prevent such damage or injury or violation of Applicable Law. Such action may include temporarily disconnecting and removing all or a portion of the System, in compliance with the conditions of Section 2.4 herein, or suspending System operation.

11.3 Removal of System. Upon any termination of this Agreement with respect to the System pursuant to this Article 11, Provider shall remove the applicable System pursuant to Section 2.4 hereof, absent (to the extent applicable) any purchase of the System pursuant to Section 2.2 hereof.

12. DISPUTE RESOLUTION.

12.1 Resolution by Parties. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a “Dispute”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party. In the event that the Parties are unable to reach agreement within such thirty (30) day period (or such longer period as the Parties may agree) then either Party may refer the matter to legal proceedings in accordance with Section 12.2; provided, however, that if the Dispute involves the amount of an invoice and after ten (10) days of mutual discussion either Party believes in good faith that further discussion will fail to resolve the Dispute to its satisfaction, such Party may immediately refer the matter to legal proceedings in accordance with Section 12.2.

12.2 Governing Law.

- (a) This Agreement has been delivered in, and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed entirely within such State.
- (b) Each Party hereby irrevocably agrees, accepts and submits itself to the non-exclusive jurisdiction of the courts of the State of New York in the County of New York and of the United States District Court for the Southern District of New York in Manhattan, in connection with any legal action, suit or proceeding with respect to any matter relating to or arising out of or in connection with this Agreement or any other transaction or document related to this Agreement.
- (c) Each Party hereby irrevocably consents and agrees to the service of any and all legal process, summons, notices and documents out of any of the aforementioned courts in any such suit, action or proceeding, which service may be made by mailing copies thereof by registered or certified mail, postage prepaid, at the address set forth in Section 15 (including the Department of Law) or at such other address as such Party has later specified in writing (the Parties agree that such service will become effective five (5) Business Days after such mailing). Each Party hereby agrees that service upon it, or any of its agents, in each case in accordance with this Section 12.2(c), shall constitute valid and effective personal service upon such Party, and each Party hereby agrees that the failure of any of its agents to give any notice of such service to any such Party shall not impair or affect in any way the validity of such service on such Party or any judgment rendered in any action or proceeding based thereon. Nothing herein shall affect the right of any Party to service of process in any other manner permitted by Applicable Law or to commence legal proceedings or to proceed against any other Party in any jurisdiction other than that specified above.

13. LIMITATION OF LIABILITY. NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED

PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR, LOSSES OR DAMAGES FOR LOST REVENUE, LOST INCOME, LOST PROFITS, LOST BUSINESS OR ANY BUSINESS INTERRUPTION WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS OR RELATIONSHIP BETWEEN THE PARTIES CONTEMPLATED UNDER THIS AGREEMENT OR ANY SCOPE OF WORK, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF ANY PRIOR COURSE OF DEALING BETWEEN THE PARTIES. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, A PARTY'S MAXIMUM LIABILITY TO THE OTHER PARTY SHALL BE LIMITED, IN THE AGGREGATE, TO THE CONTRACT PRICE, EXCEPT WITH REGARD TO ANY EARLY TERMINATION FEE, INDEMNITY OBLIGATIONS IN RESPECT TO THIRD PARTY CLAIMS AND BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 16.

14. ASSIGNMENT.

- 14.1 Assignment by Provider. Except for the provisions in Section 14.3, Provider shall not sell, transfer or assign (collectively, an "Assignment") this Agreement or any interest therein, without the prior written consent of Host; provided, however, that, without the prior consent of Host, Provider may (i) make an Assignment to an Affiliate of Provider to whom Provider also transfers the System (provided that such Assignment shall not release Provider from its obligations and liabilities hereunder without the consent of Host, with such consent not to be unreasonably withheld or delayed), (ii) make an Assignment through merger, consolidation or sale of all or substantially all of Provider's stock or assets including the System (provided that such assignee meets the qualifications set forth in clauses (x) and (y) of the next sentence in this Section 14.1), or (iii) sell, transfer, assign or pledge its interest in the System or any monies due under this Agreement to Provider's Lender (provided that Host will not pay to a third party any monies owed hereunder without the advance written direction of Provider). Host's consent to any other Assignment shall not be unreasonably withheld or delayed if Host 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 the Solar Services; and (y) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement and after the Assignment will own the System. A direct assignee from Provider of this Agreement shall assume in writing, in form and content reasonably satisfactory to Host, the due performance of all Provider's obligations under this Agreement, including any accrued obligations at the time of the Assignment.

Other than to or with a Lender, Provider will not sell or lease the System to any Person unless it also assigns all of its rights and obligations to such Person and such Assignment is permitted by this Section 14.1.

Assignments or transfers not in compliance with this section will be void and ineffective. No assignment permitted hereunder will relieve a Party of any of its obligations hereunder, except as explicitly provided for hereunder.

14.2 Assignment by Host.

- (a) With the exception of the circumstances in Section 14.2(b) with respect to disposal of Property, Host shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld; provided, however, that, without the prior consent of Provider, (i) Host may make an Assignment to an Affiliate of Host ("Affiliate Assignee") with respect to all or part of the System or Property if such Affiliate Assignee's unsecured debt is rated not less than the Minimum Credit Rating and such Affiliate Assignee has the financial capability to perform its obligations under this Agreement, or (ii) Host may make an Assignment by operation of law through merger, consolidation or sale of all or substantially all of Host's stock or assets, (A) provided the unsecured debt of such Person surviving such merger, consolidation or sale is rated not less than the Minimum Credit Rating or (B) such Person furnishes Security, and under both (A) and (B) no event of Default exists hereunder after giving effect to such merger, consolidation or sale. A direct assignee under clause (i) from Host of this Agreement shall assume in writing, in form and content reasonably satisfactory to Provider, the due performance of all Host's obligations under this Agreement, including any accrued obligations at the time of the Assignment. A copy of the Assignment agreement, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if the assignee is a corporation) authorizing such Assignment agreement, shall be sent to Provider not less than thirty (30) days before the effective date of such Assignment. If Host or Affiliate Assignee makes an assignment pursuant to (i) or (ii) above, Host or Affiliate Assignee, as applicable, shall be released from its obligations hereunder. Without Provider's consent, Host may elect to assign the Agreement to the Affiliate but not be released and therefore remain liable with the Affiliate for all amounts and other obligations owed to the Provider under the Agreement. In order for a Qualified Purchaser or other acquiring party to assume all obligations under this Agreement, such Qualified Purchaser or other acquiring party must execute a separate agreement or agreements with Provider, reasonably satisfactory to Provider and its Lender, which agreements or agreements shall obligate such Qualified Purchaser to assume or agree to substantially the same economic and legal terms as provided in the Agreement (including all future payment and performance obligations), resulting in the same economic benefits and obligations for Provider with respect to the Property as if the Agreement has remained in effect (the "Replacement Agreement").
- (b) If Host elects to dispose of the Property, the Agreement shall not terminate as to the Property and Host may elect among the following alternatives:

- i. Host may cause the acquiring party to assume all obligations under the Agreement with respect to such Property in the manner set forth below and if the unsecured debt of the acquiring party is rated by Moody's and S&P not less than the Minimum Credit Rating or the acquiring party otherwise has the financial capability to perform its obligations under the Replacement Agreement, as reasonably determined by both Parties, or furnishes a letter of credit (the "Security") in the amount of the total estimated rental payments for Solar Services for the remaining Term (as such amount shall be reduced on a quarterly basis) (a "Qualified Purchaser"), Host shall be released from its obligations hereunder; or
 - ii. (ii) Host may elect to assign the Agreement to the acquiring party but not be released and therefore remain liable with the acquiring party for all amounts and other obligations owed to the Provider under the Agreement with respect to the transferred Property.
- (c) In order for a Qualified Purchaser or other acquiring party to assume all obligations under this Agreement with respect to such Property, such Qualified Purchaser or other acquiring party must execute (i) a separate assignment and assumption agreement for all of Host's obligations hereunder, or (ii) a separate agreement or agreements with Provider, reasonably satisfactory to Provider and its Lender, which agreements or agreements shall obligate such Qualified Purchaser to assume or agree to substantially the same economic and legal terms as provided in the Agreement (including all future payment and performance obligations) with respect to the Property, resulting in the same economic benefits and obligations for Provider with respect to the Property as if the Agreement has remained in effect with respect to the Property. Notwithstanding the foregoing, a Qualified Purchaser or other acquiring party may not assume such obligations if such assumption cannot be achieved without loss to Provider of any regulatory "self-generation" exception, or any loss of subsidy payments unless Provider is compensated for such loss as is identified at the time of the assignment. If Host elects to proceed under paragraph (b)(ii) and not be released, Host shall execute a separate agreement with Provider, satisfactory to Provider and its Lender, confirming its continuing obligations.

14.3 Lender Accommodations. Host acknowledges that Provider will be financing the acquisition and installation of the System with financing accommodations or through a sale/leaseback arrangement or partnership-flip financing of the System from or to one or more financial institutions and that Provider's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System or sale/leaseback arrangement or partnership-flip financing of the System. Host shall have no obligation to grant Lender or any Provider assignee any different or greater rights in the event of an assignment by Provider than Provider would have under this Agreement. In the event of an assignment by Provider, the assignee or Lender shall have precisely the same rights and obligations under this Agreement as would Provider, the provisions of this Section 14, Exhibit A or any other

provision of this Agreement to the contrary, if any, notwithstanding. In order to facilitate such necessary financing, and with respect to any such financial institutions of which Provider has notified Host in writing (each, a “Lender”), Host agrees as follows:

- (a) Consent to Collateral Assignment. Host consents to the collateral assignment by Provider to the Lender, of the Provider’s right, title and interest in and to this Agreement. The assignment shall be subject to the provisions of this Agreement.
- (b) Rights Upon Event of Default.
 - i. The Lender, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. Lender shall also be entitled to exercise all rights and remedies of secured parties, or the owner of the System, generally with respect to this Agreement and the System; provided that any Assignment or transfer of this Agreement shall only be made to a Qualified Assignee.
 - ii. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Provider under this Agreement or (unless the Lender has succeeded to Provider’s interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so; provided that if the Lender, directly or indirectly, takes possession of, or title to, the System pursuant to possession by a receiver or title by foreclosure, then the Lender will (a) cure any Provider Defaults hereunder to the extent that such defaults are capable of being cured by Lender, as a condition to such taking of possession or title, and (b) assume all of Provider’s pre-existing, current and future obligations under this Agreement.
 - iii. Upon the exercise of remedies under its security interests or enforcement rights in the System, including any sale thereof by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Lender (or any Qualified Assignee) in lieu thereof, the Lender shall (A) cause the purchaser or transferee of the System to assume all of the Provider’s rights and obligations under this Agreement and (B) give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

- iv. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, (A) at the request of Lender made within ninety (90) days of such termination or rejection, Host shall enter into a new agreement with Lender or its Qualified Assignee having the same terms and conditions as this Agreement and (B) Lender shall or shall cause its Qualified Assignee to enter into a new agreement with Host having the same terms and conditions as this Agreement if Host so requests within ninety (90) days after such termination.
 - v. “Qualified Assignee” means a business organization (i) with at least three (3) years’ experience in the operation and management of commercial solar generating systems of similar size and complexity of the System or (ii) managed by individuals having at least three (3) years’ experience in the operation and management of commercial solar generating systems of similar size and complexity of the System and (iii) that has an unsecured debt rating by Moody’s and S&P not less than the Minimum Credit Rating or otherwise has the financial capability to perform its obligations under the Agreement in Host’s reasonable judgment.
- (c) Acknowledgement and Confirmation. Host shall provide an Acknowledgement and Confirmation in the form of Exhibit B or Exhibit B-1, as applicable, attached hereto, from Host’s landlord or Host, if any, that the ownership of the System remains in Provider and further acknowledging that the System is personal property of Provider.
- (d) Right to Cure.
- i. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties’ respective obligations will otherwise remain in effect during any cure period.
 - ii. If the Lender or its Qualified Assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Provider’s assets and shall, within the time periods described in Section 14.3(d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the

manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

- (e) Host acknowledges and agrees that Provider may change the Lender at any time, in Provider's sole discretion, and Host shall abide by such new contact information and payment directions as instructed by Provider.
- (f) Security Interest. Notwithstanding any provision to the contrary in this Agreement, in the event that Provider grants a security interest in the System to Lender, Host consents to any required filing to perfect such a security interest so long as that filing clearly documents the Parties' intent that the System is considered personal property only and is not considered a fixture to the Property. Such filing shall not create any interest in or lien upon the real property or the interest of Host therein and shall expressly disclaim the creation of such an interest or lien, provided that Provider shall be permitted to make a prophylactic fixture filing with regard to the System.

15. NOTICES.

- 15.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider: c/o Greenskies Renewable Energy LLC
10 Main Street
Suite E
Middletown, CT 06457
Telephone: 860-398-5408
Email: achester@greenskies.com
Attn: Andrew Chester

If to Host:

County of Erie
Commissioner of
Environment & Planning
95 Franklin Street, 10th
Floor
Buffalo, NY 14202

Telephone: (716) 858-7674
Email: Thomas.Hersey@erie.gov
Attn: Thomas Hersey, Deputy Commissioner

With a copy to: County of Erie Department of Law
95 Franklin Street, Room 1634
Buffalo, NY 14202 Telephone: (716) 858-2222
Email: Kristen.Walder@erie.gov
Attn: Kristen Walder, Assistant County Attorney

or at such other address as may be designated in writing to the other Party.

- 15.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.
- 15.3 Notices of Default. Host will deliver to the Lender, concurrently with delivery thereof to Provider, a copy of each notice of default given by Host under this Agreement, inclusive of a reasonable description of Provider Default. No such notice will be effective absent delivery to the Lender.
- 15.4 Address for Invoices. All invoices under this Agreement shall be sent to the address provided by Host. Invoices shall be sent by regular first class mail postage prepaid, or electronically as mutually agreed upon by the Parties.

16. CONFIDENTIALITY.

- 16.1 Confidentiality Obligation. 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 Host'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 other Party, 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. 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

or purchasers of the property of Provider (provided and on condition that such potential assignees or purchasers be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. 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 Article, except as set forth in Section 16.3. 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 upon the request of the disclosing Party.

16.2 Permitted Disclosures. Notwithstanding any other provision herein, Confidential Information shall not include, and neither Party shall be required to hold confidential, any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall immediately notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

16.3 Goodwill and Publicity.

- (a) Neither Party shall use the 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; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will Provider acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to Host.

- (b) To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Host, if engaged in commerce and/or trade, shall submit to Provider for approval any press releases regarding Host's use of solar renewable energy from the System and shall not submit for publication any such releases without the written approval of Provider. Approval shall not be unreasonably withheld, and Provider's review and approval shall be made in a timely manner to permit Host's timely publication. Host and Provider may by mutual written agreement set forth specific statements that may be used by Host in any press releases that address Host's use of solar or renewable energy from the System.

16.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article 16 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 any breach of the provisions of this Article 16. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article 16, but shall be in addition to all other remedies available at law or in equity.

17. INDEMNITY.

- 17.1 Provider's Indemnity. Subject to the provisions of Section 13, Provider agrees that it shall indemnify and hold harmless Host, its directors, officers, members, shareholders, employees, subcontractors, agents or representatives, assignees or lessors, as well as Host's permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Host Indemnified Parties") from and against any and all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's design, installation, testing, maintenance, operation, repair, replacement or removal of the System; (b) any infringement of patents or the improper use of other proprietary rights or intellectual property by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, Solar Operations, the provision of Solar Services or the ownership and use of the System; (c) Provider's violation of Applicable Law; (d) acts or omissions of Provider that cause a breach of the Interconnection Agreement (as clarified below); (e) third party claims arising from the failure to construct or install the System in accordance with the requirements of Section 8.3; or (f) any claim arising pursuant to any Environmental Law based on, arising out of or otherwise relating to: (i) the presence or installation, removal or operation of the System, (ii) the remediation, presence or release of, or exposure to, Hazardous Materials brought to the Property by Provider or its employees, representatives, agents or contractors or generated or otherwise created in connection with the Work or the System, or (iii) any violations of any Environmental Law by Provider or its employees, representatives, agents or contractors. Provider shall not, however, be required to reimburse or indemnify any

Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Host Indemnified Party.

- 17.2 Host's Indemnity. Subject to the provisions of Section 13, Host agrees that it shall indemnify and hold harmless Provider, its directors, officers, members, shareholders, employees, subcontractors, agents or representatives, assignees or lessors, as well as Provider's permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by the Provider Indemnified Parties to the extent arising from or out of: (i) any claim for or arising out of any injury to or death of any Person to the extent arising out of Host's negligence or willful misconduct; (ii) loss or damage to property of any Person to the extent arising out of Host's negligence or willful misconduct; (iii) any acts or omissions of Host that cause a breach of the Interconnection Agreement; or (iv) any claim arising out of the existence at the Property of any Hazardous Material, except to the extent deposited, spilled, released or otherwise caused by Provider or any of its contractors or agents. Host shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

17.3 Indemnification Procedure.

- (a) Whenever any claim arises for indemnification under this Agreement, the Person who has the right to be indemnified (the "Indemnified Party") shall notify the Person who has the indemnification obligation (the "Indemnifying Party") in writing as soon as practicable (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Party has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to the Indemnified Party giving rise to such indemnification right and the amount or an assessment of the amount of the liability arising therefrom.
- (b) If the facts giving rise to any such indemnification shall involve any actual or threatened claim or demand by any third party (including an inquiry or audit by any Governmental Authority with respect to any period in whole or in part prior to the date of this Agreement) against the Indemnified Party or any possible claim or demand by the Indemnified Party against any such third party, the Indemnifying Party shall (without prejudice to the right of the Indemnified Party to participate at its expense through counsel of its own choosing) defend such claim in the name of the Indemnified Party at the Indemnifying Party's expense and through counsel of its own choosing. The Parties shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony and attend such conferences and discovery as reasonably requested in connection therewith.

- (c) Notwithstanding the Indemnifying Party's obligation to assume and conduct the defense of a claim for indemnification with counsel of its choice, the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to a claim for indemnification without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld) unless the judgment or proposed settlement involves the payment of money damages and does not impose an injunction or other equitable relief upon the Indemnified Party or any acknowledgment of the validity of any claim. Until the Indemnifying Party assumes the defense of a claim of indemnification arising out of a third party claim, the Indemnified Party may defend against the third party claim in any manner it may deem reasonably appropriate; provided that in no event shall the Indemnified Party consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld).
- (d) At the time that the Indemnifying Party makes any indemnification payment under this Agreement, the indemnification payment shall be adjusted such that the indemnification payment will result in the Indemnified Party receiving an amount equal to such indemnity payment, after taking into account (i) all national, state, and local income taxes that are actually payable by the Indemnified Party with respect to the receipt of such indemnity payment, and (ii) all national, state, and local income tax deductions allowable to the Indemnified Party for any items of loss and deduction for which the Indemnified Party is being indemnified.

18. INSURANCE.

- 18.1 Generally. Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law; (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence; and (c) Umbrella Liability Insurance with a limit of not less than \$5,000,000. Additionally, Provider shall carry adequate property loss insurance on the System; Host shall not be required to provide property coverage for the System. Subject to the limitations contained above in this Section 18.1, the amount and terms of insurance coverage will be determined at Provider's sole discretion. Provider acknowledges Host is self-insured. Host acknowledges that it maintains requisite safeguards to effectuate coverages materially similar to those contained in this Section 18.1.
- 18.2 Certificates of Insurance. Provider shall furnish current certificates evidencing that the insurance required under Section 18.1 is being maintained. Each insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days written notice before the insurance is cancelled or materially altered.

- 18.3 Additional Insureds. Provider's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.
- 18.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

19. MISCELLANEOUS.

- 19.1 Integration; Exhibits, Schedules and Appendices. This Agreement, together with the Exhibits, Schedules and Appendices attached hereto, constitutes the entire agreement and understanding between Provider and Host with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof. The Exhibits, Schedules and Appendices attached hereto are integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, Schedule or Appendix, the provisions of this Agreement shall prevail, and such Exhibit, Schedule or Appendix shall be corrected accordingly.
- 19.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Host.
- 19.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, Prudent Industry Practices shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.
- 19.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Host shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- 19.5 Limited Effect of Waiver. The failure of Provider or Host to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 19.6 Survival. The obligations under Sections 2.4 (Removal of System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e), (f), (g) and (h) (Host Covenants), Section 8.5 (Exclusion of Warranties), Section 9 (Taxes and Governmental Fees), Section 12 (Dispute Resolution), Section 13 (Limitation of Liability), Section 15 (Notices), Section 16 (Confidentiality), Section 17 (Indemnification), Section 19 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

- 19.7 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.
- 19.8 Relation of the Parties. The relationship between Provider and Host shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.
- 19.9 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Host and their respective permitted successors and assigns. Except for the rights of Lender under this Agreement, and for express beneficiaries under the indemnity provisions in Article 17 of this Agreement, nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.
- 19.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
- 19.11 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 19.12 Liquidated Damages Not Penalty. Host acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of this Agreement. Host further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Host's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Host in lieu of Provider's actual damages.
- 19.13 No Third Party Beneficiaries. Except as otherwise expressly provided herein, 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.

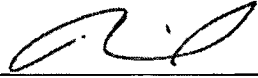
- 19.14 Non-Dedication of Facilities. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a Governmental Authority that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Provider 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 Provider does not become subject to any such regulation.
- 19.15 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, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Host have executed this Agreement as of the Effective Date.

"PROVIDER":

GRE ERIE COUNTY SOUTH MAIN LLC

By: 

Name: MICHAEL SELVESTRE

Title: AUTHORIZED REPRESENTATIVE

Date: 3/15/2016

"HOST":

ERIE COUNTY

By: 

Name: Maria Whyte

Title: Deputy County Executive

Date: 3/21/16

16-263-EP

APPROVED AS FORM:

ELECTRONICALLY SIGNED

By:

Kristen Walder

Assistant County Attorney

Doc No. _____

Dated: _____

APPROVED AS TO CONTENT:

By: _____
ELECTRONICALLY SIGNED

Maria R. Whyte

Commissioner, Department of Environment and Planning

Date: _____

EXHIBIT A
to
Solar Power & Services Agreement

ACKNOWLEDGEMENT AND CONFIRMATION

This Acknowledgement and Confirmation, dated as of _____, 20____ (this “Acknowledgement”), is made by [Erie County, a New York county], the “Host” under that certain Solar Power & Services Agreement dated as of _____, 2015 (as amended from time to time, the “Agreement”) with [GRE Erie County Ground LLC, a Delaware limited liability company] (“Provider”). This Acknowledgement is provided pursuant to Section 14.3 of the Agreement to the Provider and Lender (as defined in the Agreement). Capitalized terms not defined herein shall have the definitions assigned to them in the Agreement.

The solar photovoltaic system (the “System”) to be installed, operated and maintained by Provider pursuant to the Agreement is to be located at Host’s property at 11581 Walden Ave, Alden, NY 14004 (the “Property”).

1. Acknowledgement of Collateral Assignment:

- (a) Host acknowledges the collateral assignment by Provider to the Lender, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 14.3(a) of the Agreement.
- (b) The Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider’s interests in the Agreement, including those rights provided to Lenders in Section 14.3 of the Agreement. Lender’s rights shall at all times be subject to the obligations under stated in Section 14.3 of the Agreement.
- (c) Host acknowledges that it has been advised that Provider has either granted a first priority security interest in the System to Lender or sold the System to Lender and that Lender has relied upon the characterization of the System as personal property, as agreed in the Agreement in accepting such security as collateral for its financing of the System.
- (d) Until further written notice, Host agrees to make all payments due Provider under the Agreement by remitting such payments to the account specified below:

2. Confirmation. Host confirms as of the date hereof the following matters for benefit of the Lender except as disclosed herein:

- (a) To Host's knowledge, there exists no event or condition which constitutes a default, or that would, with the giving of notice or lapse of time, constitute a default, under the Agreement.
- (b) Host has reviewed and approved anticipated Provider's installation work schedule for the Property including a preliminary list of System equipment.
- (c) Host is aware of no existing Lease, mortgage, security interest or other interest in or lien upon the Property which could attach to the System as adverse to Lender's security interest therein.

3. Third-Party Beneficiary. Lender shall be a third-party beneficiary to this Acknowledgement with full right and authority to enforce the provisions hereof.

HOST:

PROVIDER:

[ERIE COUNTY]

[GRE ERIE COUNTY GROUND LLC]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B
to
Solar Power & Services Agreement
(Independent Landlord)

FORM OF OWNER ACKNOWLEDGEMENT AND CONFIRMATION

This Owner Acknowledgement and Confirmation, dated as of _____, 20____ (this "Acknowledgement"), is made by [____], (the "Owner") to [GRE Erie County Ground LLC] (the "Provider"). Owner is the owner of real property situated at 11581 Walden Ave, Alden, NY 14004 (the "Premises"). The Property is leased to [Erie County] ("Host") by the certain Lease dated _____, 20____ by and between Owner and Host (the "Lease").

Owner has been made aware of the Solar Power & Services Agreement dated as of _____, 2015 (the "Agreement") between Host and Provider pursuant to which a solar photovoltaic system (the "System") is to be installed, operated and maintained by Provider at Owner's facility (the "Building") at the Property. The System will be connected to the electrical system of the Building as a supplemental source of electrical power. Any capitalized terms not defined herein shall have the definitions assigned to them in the Agreement.

Host has caused Owner to provide this Acknowledgement to Lender (as defined in the Agreement), Host and Provider. Lender is providing financial accommodations to Provider to finance the installation of the System. Owner has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the "Security Interest") in the System to Lender to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code. The Security Interest will cover the System as personal property only, and not as a fixture. A prophylactic fixture filing will also be filed with regard to the System.

Owner hereby acknowledges and confirms to Lender following matters with respect to the Property:

- (a) Provider has the rights to install the System set forth in the Agreement and the Agreement does not prohibit Provider's grant of the Security Interest.
- (b) To the best of Owner's knowledge, the granting of the Security Interest will not violate any term or condition of the Lease, or any covenant, restriction, lien, financing agreement, or security agreement to which Owner is a party.
- (c) Owner acknowledges that Section 5.3 of the Agreement states that, as between the Parties, the System is personal property and Lender has relied upon the characterization of the System in such Section 5.3 in accepting the Security Interest as collateral for its financing of the System; provided that Owner is not making any

representation about the legal characterization of the System as personal property under any law.

- (d) Assuming the validity of the System classification as personal property, Owner is aware of no existing Lease, mortgage or security interest to which Owner or its affiliates are a party or by which the Property or Building is bound that would constitute a lien or security interest in the System as an interest adverse to Lender's Security Interest therein.
- (e) Owner covenants that it will not (i) assert or affirmatively claim or represent in any agreement or contract that the System is not personal property or is not owned by Provider or Lender, or (ii) enter into any security agreement or similar document that specifies the System as being part of the collateral for the lien or security interest therein.
- (f) Owner disclaims any right to receive Tax Attributes or Environmental Attributes.

OWNER

[Name of Owner]

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT B-1
to
Solar Power & Services Agreement
(Host Landlord)

FORM OF OWNER ACKNOWLEDGEMENT AND CONFIRMATION

This Owner Acknowledgement and Confirmation, dated as of _____, 20____ (this "Acknowledgement"), is made by [Erie County, a New York county] ("Owner"). Owner is the owner of real property situated at 11581 Walden Ave, Alden, NY 14004 (the "Premises").

Owner is party to that certain Solar Power & Services Agreement dated as of _____, 2015 (the "Agreement") between Owner and [GRE Erie County Ground LLC] ("Provider") pursuant to which a solar photovoltaic system (the "System") is to be installed, operated and maintained by Provider at Owner's facility (the "Building") at the Premises. The System will be connected to the electrical system of the Building as a supplemental source of electrical power. Owner is the "Host" under the Agreement

This Acknowledgement is provided pursuant to Section 14 of the Agreement to Provider and Lender (as defined in the Agreement), which is providing financial accommodations to Provider to finance the installation of the System. Owner has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the "Security Interest") in the System to Lender to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code. The Security Interest will cover the System as personal property only, and not as a fixture. A prophylactic fixture filing will also be filed with regard to the System.

Owner hereby acknowledges and confirms to Lender the following matters with respect to the Premises:

- (a) Provider has the rights to install the System set forth in the Agreement and the Agreement does not prohibit Provider's grant of the Security Interest.
- (b) To the best of Owner's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement to which Owner is a party.
- (c) Owner acknowledges that Section 5.3 of the Agreement states that, as between the Parties, the System is personal property and Lender has relied upon the characterization of the System in such Section 5.3 in accepting the Security Interest as collateral for its financing of the System; provided that Owner is not making any representation about the legal characterization of the System as personal property under any law.
- (d) Assuming the validity of the System classification as personal property, Owner is aware of no existing lease, mortgage or security interest to which Owner or its

affiliates are a party or by which the Premises or Building is bound that would constitute a lien or security interest in the System as an interest adverse to Lender's Security Interest therein.

- (e) Owner covenants that it will not (i) assert or affirmatively claim or represent in any agreement or contract that the System is not personal property or is not owned by Provider or Lender, or (ii) enter into any security agreement or similar document that specifies the System as being part of the collateral for the lien or security interest therein.

- (f) Owner disclaims any right to receive Provider EAs or Environmental Attributes.

OWNER:
[ERIE COUNTY]

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF MEMORANDUM OF ACCESS LICENSE

After recording return to:

[_____]
10 Main Street, Suite E
Middletown, CT 06457

BE IT KNOWN THAT [_____] a [_____] ("Provider"), and [_____] ("Host") executed that certain Solar Power & Services Agreement ("Agreement") dated as of [_____] concerning the property described in the attached Schedule "A" (the "Site"). Initial capitalized terms used and not otherwise defined in this Memorandum of Access License shall have their respective meanings as set forth in the Agreement.

This Access License is granted to Provider only for the purpose of performing its obligations pursuant to the Agreement and for no other purpose. This Access License is granted pursuant to, and is subject to the limitations in, Section 7.2(g) of the Agreement.

Host has granted Provider a royalty-free license for access to the Property from a public road or access route and use of the Property, as reasonably necessary, during the Term and for so long as needed after termination, to allow Provider to perform the Installation Work, System Operations and System removal, including ingress and egress rights to the Property for Provider and its employees, Lenders, contractors and sub-contractors and access to electrical panels and conduits to interconnect or disconnect the System with the applicable Property's electrical wiring.

The Access License shall give Provider a non-exclusive right to the Site as well as portions of the Property that are reasonably required by Provider in order to install, maintain and own the System, including a reasonable area for construction laydown and delivery and storage of materials and equipment, provided that Provider's use of the Property shall not interfere with Host's normal operations on the Property.

(signature pages follow)

This Memorandum may be signed in two counterpart copies of the entire document or of signature pages to the document, each of which may be executed by one of the parties hereto, but all of which, when taken together, shall constitute a single agreement binding upon the parties hereto.

DATED: as of [_____].

Provider:

[_____]

By:

Name (printed):

Title:

Host:

[_____]

By:

Name (printed):

Title:

STATE OF _____)
)
COUNTY OF _____) SS.

On _____ before me, _____, Notary Public,
personally appeared _____, personally known to me or proved
to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within
instrument and acknowledged to me that he/she executed the same in his/her authorized capacity,
and that by his/her signature on the instrument the person, or the entity on behalf of which the
person acted, executed the instrument.

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

WITNESS my hand and official seal.

EXHIBIT D

FORM OF INVOICE



Greenskies
10 Main Street
Suite E
Middletown, CT 06457
(860) 398-5408

Solar Services Invoice

Billing Date: May 01, 2013
Billing Period: Apr 01, 2013 - May 01, 2013
Due Date: May 17, 2013

Invoice #
XXXX Store #XXX
1 Main St
Anytown, CT 06000

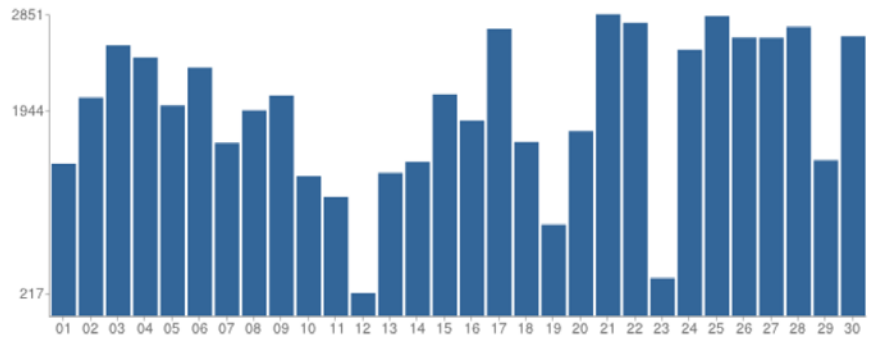
| Meter | Apr 1 kWh Reading | May 1 kWh Reading | Period kWh |
|-----------------|-------------------|-------------------|------------|
| XXXX Store #XXX | XXXXXX | XXXXXX | XXXXXX |
| TOTAL | XXXXXX.0 | XXXXXX.0 | XXXXXX.0 |

Electric Rate
\$0.XX/kWh

Solar Service Charges
\$X,XXX.XX

Sales Tax
if applicable

TOTAL DUE
\$X,XXX.XX



Questions about your bill?

www.greenskies.com
info@greenskies.com

Legal

Greenskies will assess a late payment charge on the unpaid portion of a bill. The current interest charge is 1% of the past due balance. A balance is considered past due if payment is not received in accordance with the Power Purchase Agreement between you and a Single Purpose Entity.

APPENDIX
to
Solar Power & Services Agreement

This Appendix consists of **seven (7)** schedules, and the required certifications.

DESCRIPTION OF PROPERTY

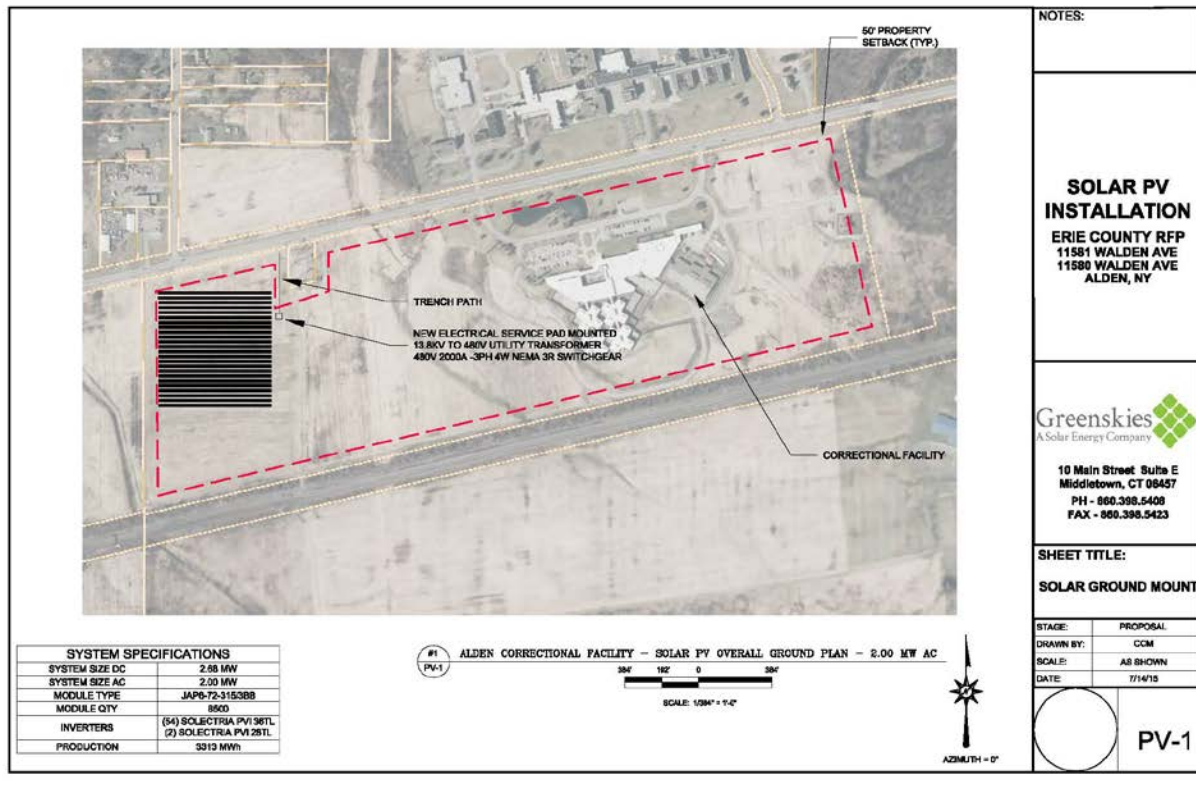
Address: 11581 Walden Ave, Alden, NY 14004

The Property consists of two (2) contiguous parcels with tax ID's: SBL 96.00-5-9.1 and 96.00-4-13.

Satellite Picture of Property:



Preliminary Layout:



DESCRIPTION OF SYSTEM

Estimated Solar System Size and Location (“System Site”)

* Subject to Final Engineering

Estimated Solar System Size: 2,677.5 kW DC

Module: JA Solar, JAP6-72-315/3BB (or equivalent)

Module Warranty: See Attached

Inverter: Solectria Renewables, PVI 28TL and PVI 36TL (or equivalent)

Inverter Warranty: See Attached

Delivery Point: Existing Main Distribution Panel

Monitoring Equipment: DECK Monitoring

System Description:

This project aligns 8,500 modules on the property owned by Erie County located at 11581 Walden Ave, Alden, NY 14004. DC power from the solar modules will be routed in electrical conduit to the inverter. AC power from the inverters will be routed to the existing main electrical panel. Inverters will be mounted on a concrete pad outside of the building protected by bollards. A revenue-grade kWh meter will be installed to measure the electrical production of the array. A DECK Monitoring data acquisition system will also be provided and installed in the electrical room at the facility and will utilize local internet service provided by Host. All electricity carrying both AC and DC power will be installed according to the National Electric Code, as well as any State or Local code that may be applicable. All components of the system are UL listed.

Provider's Operating Representative:

Steve DeNino
10 Main Street, Suite E,
Middletown, CT 06457
860-398-5408
sdenino@greenskies.com

Appendix – SCHEDULE 3

SYSTEM TEST PROCEDURES



Commissioning Procedures
Rooftop Solar Installation

| SYSTEM INFORMATION | | | |
|--|---|---------------------------|-------|
| Facility Name | | System Size (kwDC) | |
| Address | | Array Tilt | |
| City | | Array Azimuth | |
| State | | | |
| Zip | | | |
| EQUIPMENT INFORMATION | | COMMISSIONING INFORMATION | |
| Inverter Make | | Field Tech Name: | |
| Inverter Model | | Title: | |
| Inverter Quantity | | Field Tech Name: | |
| Module Make | | Title: | |
| Module Model | | Date of Site Visit: | |
| Module Rating | | Time of Site Visit: | |
| Module Quantity | | Performance Data Dates: | |
| General Conditions during Field Inspection | | | |
| Step | Description | Result | |
| 1 | Record Ambient Temperature (F) | | |
| 2 | Record Cloud Cover (Clear, Partly Cloudy, Cloudy, Rain, Snow) | | |
| Ground Equipment - Visual Inspection | | | |
| Step | Description | Result | Photo |
| 1 | Confirm Main Breaker has been adjusted to drawing specifications | | |
| 2 | Confirm all switchgear filler panels are in place | | |
| 3 | Confirm that switchgear has proper labeling per drawings and specs | | |
| 4 | Confirm that all penetrations have been sealed | | |
| 5 | Confirm that all conduits have been painted | | |
| 6 | Confirm that all Raceways and Panelboxes covers are installed | | |
| 7 | Confirm that weatherproof raceway fittings have been installed | | |
| 8 | Confirm that all exterior equipment is at least NEMA 3R | | |
| 9 | Confirm proper ampacity fuses have been installed in AC disconnect, if required | | |
| 10 | Confirm that CT's and PT's have been installed | | |
| 11 | Confirm that the correct REC meter socket has been install | | |
| 12 | Confirm that electrical installer used anti-oxidizing agent on alluminum wire connections | | |
| 13 | Confirm ampacity of all breakers in the PV-DP Panel | | |
| 14 | Confirm that all wire types and sizes are according to design plans and specs | | |
| 15 | Confirm that all breakers are labeled and panelboard index has been filled out | | |
| 16 | Confirm that all exterior equipment has been labeled per the plans and specs | | |
| 17 | Confirm that all monitoring equipment is installed | | |
| 18 | Confirm that monitoring equipment has been programmed and is reporting | | |
| 19 | Confirm that Bollords have been installed and painted | | |
| 20 | | | |
| Additional Comments | | | |
| | | | |

| Rooftop Electrical & Array - Visual Inspection | | | |
|--|---|--------|-------|
| Step | Description | Result | Photo |
| 1 | Confirm that all Cable Tray covers are installed | | |
| 2 | Confirm that cables have been properly secured inside of cabletray | | |
| 3 | Confirm that all raceways are properly Labeled | | |
| 4 | Confirm that Cabletray has been properly bonded | | |
| 5 | Confirm that all metallic raceways have been properly bonded | | |
| 6 | Confirm that weatherproof raceway fittings have been installed | | |
| 7 | Confirm that all feeder cables are of proper type and size | | |
| 8 | Confirm that all Inverter racks are properly installed and ballasted | | |
| 9 | Confirm that inverter racks are properly bonded | | |
| 10 | Confirm that all sub-panel breakers are sized per plans and specs | | |
| 11 | Confirm that electrical installer used anti-oxidizing agent on alluminum wire connections | | |
| 12 | Confirm that all breakers are labeled and panelboard index has been filled out | | |
| 13 | Confirm that sub panel and Inverter are labeled according to plans and specs | | |
| 14 | Confirm that the Inverter Make and Model number are per plans and specs | | |
| 15 | Confirm that all string wiring is of proper type and size | | |
| 16 | Confirm that all wiring terminations have been completed | | |
| 17 | Confirm that all fuses are installed in string fuse holders | | |
| 18 | Confirm that all monitoring wiring is installed and terminated | | |
| 19 | Confirm that the irradiance meter has been installed | | |
| 20 | Confirm that the array matches the as-built drawings | | |
| 21 | Confirm the Module Make, Model and Power Rating matches plans and specs | | |
| 22 | Confirm that ballast loading matches the engineers ballast plan | | |
| 23 | Confirm that adhesive has been applied to double-stacked ballast blocks | | |
| 24 | Confirm that mechanical attachments are installed per plans and specs | | |
| 25 | Confirm that slip sheets are in place | | |
| 26 | Confirm that all windscreens have been installed | | |
| 27 | Confirm that all array bonding has been installed | | |
| 28 | Confirm that all string wiring is properly secured and off of the roof | | |
| 29 | Confirm that final panel connections have been made | | |
| 30 | | | |
| Additional Comments | | | |
| | | | |

| System Power(kW) Verification for AE 3TL Inverter | | | | |
|--|---|--------------|-----------|----------|
| Step | Description | Actual | Projected | Variance |
| 1 | Set up Seaward Solar Irradiance Meter with Cell Temperature Sensor on Array being tested | | | |
| 2 | Record the number of modules per string | | | |
| 3 | Record the number of strings being used | | | |
| 4 | Record the number of inverters on this site | | | |
| 5 | Record Irradiance (W/M ²) | | | |
| 6 | Record Module Temperature (°C) | | | |
| 7 | Record Ambient Temperature (°C) | | | |
| 8 | Record Windspeed (m/s) | | | |
| 9 | Using the Seaward Solar Tester perform the following Tests | | | |
| 10 | Perform Mpp Test and record power (kW) for String #1 | | 0.00 | #DIV/0! |
| 11 | Perform Mpp Test and record power (kW) for String #2 | | 0.00 | #DIV/0! |
| 12 | Perform Mpp Test and record power (kW) for String #3 | | 0.00 | #DIV/0! |
| 13 | Perform Mpp Test and record power (kW) for String #4 | | 0.00 | #DIV/0! |
| 14 | Perform Mpp Test and record power (kW) for String #5 | | 0.00 | #DIV/0! |
| 15 | Perform Mpp Test and record power (kW) for String #6 | | 0.00 | #DIV/0! |
| 16 | Record Inverter output (kW) | | 0.00 | #DIV/0! |
| 17 | System Output | | | |
| Notes | | | | |
| Performance Testing | | | | |
| Energy Performance tests will be conducted according to the protocols in ASTM Designation E2848-11 | | | | |
| Field Metering Equipment Variation | | | | |
| Step | Description | Pass/Fail | Photos | |
| 1 | Verify that the PV Reference Cell installed conforms to specifications | | | |
| 2 | Verify that the PV reference cell is installed at the plane of array | | | |
| 3 | Verify the accuracy of the PV reference Cell | | | |
| 4 | Verify that the ambient temperature sensor installed conforms to specification | | | |
| 5 | Verify the accuracy of the ambient temperature sensor | | | |
| 6 | Verify that the Wind Speed Meter installed conforms to specifications | | | |
| 7 | Verify the accuracy of the on site wind speed meter | | | |
| 8 | Verify that the generation meter is reporting accurately | | | |
| Data Collection | | | | |
| Step | Description | Confirmation | Photos | |
| 1 | Set Data Acquisition System to collect the following data in 15 minute intervals | | | |
| | Power (kW) | | | |
| | Irradiance (W/m ²) | | | |
| | Ambient Temperature (°C) | | | |
| | Wind Speed (m/s) | | | |
| 2 | Collect Data for the above parameters for a period of 10 days | | | |
| Data Comparison | | | | |
| Step | Description | Result | Photos | |
| 1 | Graph the data that was collected during the 10 day test period | | | |
| 2 | Select the data sets that best represents a typical production curve eliminating outliers and clipped data points | | | |
| 3 | Perform multi-linear regression on reporting conditions data points | | | |
| 4 | Use Calculated regression coefficients to determine actual PV power | | | |
| 5 | Perform multi-linear regression on PVSyst output files/TMY reporting conditions | | | |
| 6 | Use Calculated regression coefficients to determine projected PV power | | | |
| 7 | Compare reported condition power vs. projected power | | | |
| 8 | | | | |
| EPC CONTRACTOR SIGNATURE | | | | |
| BY: | | | | |
| NAME: | | | | |
| TITLE: | | | | |
| DATE: | | | | |

SOLAR SERVICES PAYMENT

1. Definitions

“Commercial Operation Date” shall have the meaning as defined in the Agreement.

2. Solar Pricing: For the first year of the Term the kWh rate shall be \$0.061/kWh and thereafter shall escalate by 2% on an annual basis as described below.

* Subject to NY-Sun financial incentives obtained from the NYSERDA Commercial and Industrial MW Block Program

Payments: Each payment is due on the monthly anniversary date of the Commercial Operation Date.

| Year | Contract Price Per kWh |
|------|------------------------|
| 1 | 0.061 |
| 2 | 0.062 |
| 3 | 0.063 |
| 4 | 0.065 |
| 5 | 0.066 |
| 6 | 0.067 |
| 7 | 0.069 |
| 8 | 0.070 |
| 9 | 0.071 |
| 10 | 0.073 |
| 11 | 0.074 |
| 12 | 0.076 |
| 13 | 0.077 |
| 14 | 0.079 |
| 15 | 0.080 |
| 16 | 0.082 |
| 17 | 0.084 |
| 18 | 0.085 |
| 19 | 0.087 |
| 20 | 0.089 |

Appendix – SCHEDULE 5

EARLY TERMINATION

The Early Termination Fee with respect to the System under the Agreement shall be calculated in accordance with the following tables shown below. At Expiration (the end of the Initial Term or any Renewal Term, in either case without further renewal, if permitted), the amount in Column 1 (Early Termination Fee) shall be deemed to be zero (0) and the amount in Column 2 (Minimum Option Price) shall be the amount applicable for the year then ending.

* Subject to NY-Sun financial incentives obtained from the NYSERDA Commercial and Industrial MW Block Program

| Early Termination Occurs in Year: | Termination Value "Column 1" |
|-----------------------------------|---------------------------------|
| 1 | \$8,910,479.79 |
| 2 | \$6,819,462.20 |
| 3 | \$5,512,380.89 |
| 4 | \$4,403,912.53 |
| 5 | \$3,508,040.39 |
| 6 | \$2,725,090.98 |
| 7 | \$2,559,914.55 |
| 8 | \$2,415,815.61 |
| 9 | \$2,269,811.18 |
| 10 | \$2,121,858.27 |
| 11 | \$1,971,913.04 |
| 12 | \$1,819,930.82 |
| 13 | \$1,665,866.06 |
| 14 | \$1,509,672.32 |
| 15 | \$1,351,302.26 |
| 16 | \$1,190,707.62 |
| 17 | \$1,027,839.19 |
| 18 | \$862,646.80 |
| 19 | \$695,079.31 |
| 20 | \$525,084.57 |

Appendix – SCHEDULE 5

PURCHASE OPTION

Purchase Date Occurs on:

(Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date, as such definition is modified in Section 2.2 of the Agreement)

Option Price

“Column 2”

| Year | Purchase Price |
|------|----------------|
| 1 | NA |
| 2 | NA |
| 3 | NA |
| 4 | NA |
| 5 | NA |
| 6 | \$2,725,090.98 |
| 7 | NA |
| 8 | NA |
| 9 | NA |
| 10 | \$2,121,858.27 |
| 11 | NA |
| 12 | NA |
| 13 | NA |
| 14 | NA |
| 15 | \$1,351,302.26 |
| 16 | NA |
| 17 | NA |
| 18 | NA |
| 19 | NA |
| 20 | \$525,084.57 |

* Higher of Fair Market Value of System or amount specified

EMERGENCY CONTACT INFORMATION

Host:

Provider:

Ittay Arad
Vice President of Business Development
Greenskies Renewable Energy LLC
10 Main Street, Suite E
Middletown, CT 06457
Ph: (310) 623-0488
Fax: (860) 398-5423
Email: ittay@greenskies.com

Andrew Chester
Executive Vice President
Greenskies Renewable Energy LLC
10 Main Street, Suite E
Middletown, CT 06457
Ph: (860) 398-5408
Fax: (860) 398-5423
Email: achester@greenskies.com

Michael Silvestrini
President
Greenskies Renewable Energy LLC
10 Main Street, Suite E
Middletown, CT 06457
Ph: (860) 398-5408
Fax: (860) 398-5423
Email: mike@greenskies.com

Appendix – SCHEDULE 7

MONTHLY BENCHMARK PRODUCTION PERCENTAGES

Monthly Benchmark production values expressed as percent (%) of total annual production are presented below.

* Subject to Final Engineering

| Month | Year 1 Monthly Output (kWh) | Percentages |
|--------------|--------------------------------|-------------|
| January | 158,000 | 4.8% |
| February | 188,000 | 5.7% |
| March | 302,500 | 9.1% |
| April | 327,600 | 9.9% |
| May | 380,500 | 11.5% |
| June | 400,200 | 12.1% |
| July | 386,900 | 11.7% |
| August | 356,300 | 10.8% |
| September | 302,100 | 9.1% |
| October | 237,200 | 7.2% |
| November | 146,700 | 4.4% |
| December | 127,200 | 3.8% |
| TOTAL | 3,313,200 | 100% |

Exhibit E1
INITIAL DISCLOSURE FORM

Initial Disclosure:

Exceptions to the RFP (please check the one that applies)

X This proposal does not take exception to any requirement of the RFP, ~~including but not only any~~
~~of the terms of the PPA that is a part of this RFP.~~ We reserve the right to negotiate PPA terms at a later date.

 This proposal does take exception to requirements of the RFP or terms of the PPA. The specific exceptions are listed in a separate attachment.

Exhibit E2

PROPOSER CERTIFICATION

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Erie and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Erie for the required services. The undersigned agrees and understands that the County of Erie is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Erie, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Erie and, if necessary, approved by the Erie County Legislature, Erie County Fiscal Stability Authority and/or the Office of the County Attorney.

It is understood and agreed that the County of Erie reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Erie reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Erie is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

Greenskies Renewable Energy
Proposer Name

By: 
Andrew Chester EVP
Name and Title

Exhibit E3

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

2) As required by Federal Executive Order 12549, and prescribed by federal regulations, including 48 C.F.R. Subpart 9.4, the Consultant certifies that it, and its principals:

(2) Are not presently disbarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, including any violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

© Are not presently indicted for or otherwise criminally or civilly charged by a Government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) above; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the Contractor is unable to certify to any of the statements in this paragraph, the Consultant shall attach an explanation to this certification.

Date: 7/22/15



Signature

EVP

Title

GreenSkies Renewable Energy

Organization

Exhibit E4

Certification Regarding
Drug-Free Workplace Requirements
Grantees Other Than Individuals

This certification is required by regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988, 41 U.S.C. § 701 et seq. See 48 C.F.R. Subpart 23.5.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and,
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and,
- (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

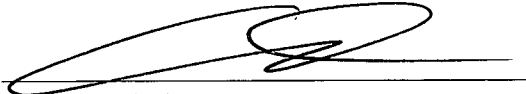
(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e) and (f).

Greenskies Renewable Energy
Organization


Authorized Signature

Title: EVP

Date: 7/22/15

Exhibit E5

Certification Regarding Lobbying
Certification for Contracts, Grants, Loans,
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:


(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Greensties Renewable Energy
Organization

 EVP 7/22/15
Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. Will Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

EXHIBIT E6

RULES AND REGULATIONS ADOPTED BY THE ERIE COUNTY COMMISSIONER OF PUBLIC WORKS REGARDING:

COUNTY OF ERIE LOCAL LAW NO. 2-2006 Apprenticeship Requirements

A LOCAL LAW in relation to a requirement for New York State Certified Worker Training Programs by contractors and subcontractors under construction contracts, as defined herein, with the County of Erie.

Pursuant to Section 5 of Erie County Local Law No. 2-2006, "the Commissioner of the Erie County Department of Public Works shall promulgate such rules and regulations that are lawful, necessary and appropriate to implement, enforce or otherwise carry out the purposes of this Local Law..." Such rules and regulations are as follows:

1. Definitions.

"Bidders" – an individual or entity which submits a formal Bid for a Construction Contract, as hereinafter defined.

"Bids" – formal bids submitted for a Construction Contract, as hereinafter defined, in accordance with New York General Municipal Law.

"Commissioner" – Erie County Commissioner of Public Works

"Construction Contract" – a contract for a Project which includes more than an incidental amount of construction-type activity performed by persons in trades or careers for which there exists an NYSCATP, as hereinafter defined.

"Contracting Agency" – a department, division, board, agency or office of the County, an entity undertaking a Project that Erie County funds indirectly, or an entity undertaking a Project with the specific intent of leasing the completed Project to the County, which solicits and receives Bids for a Construction Contract.

"Local Law" – Erie County Local Law 2-2006

"Monitoring Agency" – the Erie County Equal Employment Opportunity Office

"New York State Certified Apprentice Training Program" or "NYSCATP" - a state registered and regulated apprenticeship program(s) approved by the Commissioner of the New York State Department of Labor in accordance with Article 23 of the Labor Law and the Rules and Regulations thereto.

"Prime Contractor" – the party with whom the Contracting Agency contracts with on a Project.

"Project" – the construction, reconstruction, improvement, rehabilitation, installation, alteration, renovation, demolition or otherwise of any building, facility, roads, highways, bridges, or physical structure of any kind, estimated by the Contracting Agency as having a cost to complete in excess of \$250,000, for which the County is a direct or indirect party to a Construction Contract. Projects include those: that Erie County funds directly, either in whole or in part; that Erie County funds indirectly, either in whole or in part, by providing funds to a separate entity to perform the construction-type activity; privately financed construction projects specifically built with the intent of leasing the completed project to Erie County; and construction projects built under Erie County's direction and later paid for with Erie County funds.

"Rules" – these rules and regulations promulgated by the Commissioner pursuant to the Local Law.

"Subcontractor" – A subcontractor to a Prime Contractor.

"Workforce" – the total worker hours anticipated on the Construction Contract to be undertaken by workers in careers or trades for which there exists an NYSCATP.

2. Rules and Regulations.

a. Each Contracting Agency shall include in its bid specifications provisions for the implementation of the Local Law and these Rules. Bids shall demonstrate a Bidder's ability to comply with the Local Law and these Rules and in the event that Bidder is a successful Prime Contractor on a Construction Contract.

b. Bidder shall submit as part of the Bid a copy of the certification of approval of the NYSCATP by the New York State Department of Labor which will be used by the Bidder in connection with the Construction Contract. Such NYSCATP shall be a NYSCATP registered by the NYS Commissioner of Labor which will be utilized by the Bidder on the Construction Contract by the Bidder as a Prime Contractor or by the Bidder's Subcontractor(s).

c. As part of its' Bid, Bidder shall provide a written plan demonstrating how apprentices will be utilized by the Bidder as Prime Contractor or by Subcontractor(s) to the Bidder as Prime Contractor. Such plan shall include at a minimum, but not be limited to the following:

- i. An organized, written plan in place that embodies the terms and conditions of employment, training and supervision of one or more apprentices;
- ii. A schedule of wages to be paid to the apprentices consistent with the skills required and approved by the New York State Department of Labor;
- iii. Equal employment opportunity and affirmative action plans.
- iv. demonstration that ten percent (10%) of the Workforce of the Prime Contractor (inclusive of the workforce utilized by any Subcontractor(s) to the Bidder) shall consist of persons participating in New York State Certified Apprentice Training Programs.

d. In the alternative, Bidder may provide a statement as to the inapplicability of apprenticeship participation on the Prime Contract and the related subcontracts due to the inability of the Bidder to obtain approval of an apprenticeship training program resulting from the New York State Department of Labor's suspension of the development and approval of NYSCATP's in all trades and the addition of new participating employers to existing NYSCATPs; lack of career opportunities in NYSCATP approved by New York State Department of Labor Commissioner or that the magnitude of the Construction Contract would make use of apprentices impracticable. In the event that Bidder provides a statement that there is a lack of such career opportunities or the use of apprentices on the Construction Contract is impracticable, said Bidder may not be deemed non-responsive by virtue of the submission of such a statement, as determined by the Monitoring Agency. Applicability of this section will be viewed within the total Workforce of each Prime Contract and not as a function of each subcontract of the Construction Contract as a whole.

e. As part of its' Bid, Bidder shall provide affirmation of its commitment toward acceptable achievement or progress towards the County of Erie workforce development and diversification goal in all construction contracts of thirty percent (30%) minority and female participation combined in project personnel including trades people, trainees, journeymen, apprentices and supervisory staff.

f. Contracting Agency may determine prior to the advertisement of bids for the Project or prior to the award of Bids that the nature of the Construction Contract does not provide an adequate opportunity for the use of NYSCATP for such reasons including, but not limited to, that:

- i. 75% or more of the value of the Construction Contract involves material, equipment and/or supplies; or
- ii. there is a lack of NYSCATP approved by the Department of Labor for at least 5% of the work hours anticipated to be spent on construction-type activity involved in the Construction Contract; or
- iii. the Construction Contract is in response to an emergency condition; or
- iv. the Project is estimated to cost less than \$250,000; or


- v. none of the bids received were from Bidders who had an NYSTACP.
- g. All Bids shall be reviewed by the Monitoring Agency within 10 business days of delivery of the Bids by the Contracting Agency to the Monitoring Agency. A Contracting Agency shall not reject any Bid as being non-responsive to the requirements of the Local Law and these Rules, unless the Monitoring Agency, within 10 business days of receipt of Bids from the Contracting Agency, provides the Contracting Agency with a written report recommending non-responsiveness of the Bidder and the reasons therefore. Determination of a Bidder's compliance with the Local Law and these Rules shall be the responsibility of the Monitoring Agency.
- h. The Contracting Agency is permitted to require within the Bid specifications for a Project, a reasonable fee for the Prime Contractor to hire an independent monitor to review and report on the diversification goals of the Local Law.

Exhibit E7

Erie County Equal Pay Certification

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.



Signature

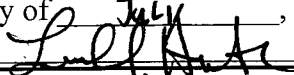
Verification

STATE OF CONNECTICUT)
COUNTY OF MIDDLESEX) SS:

A) Andrew Chester, being duly sworn, states he or she is the owner of (or a partner in) Greensties Renewable Energy, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B) Andrew Chester, being duly sworn, states that he or she is the Name of Corporate Officer EVP, of Greensties Renewable Energy, Title of Corporate Officer Name of Corporation the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this 22ND
Day of JULY, 2015



LUKE J. HESTER
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2018

Exhibit E8

Ethics and Offenses

Ethics and Offenses in Public Projects or Contracts

Has the proposer or any of its principles (regardless of the place of employment) ever been found to have violated any state or local ethics law, regulation, ordinance, code, policy or standard or to have committed any other offense arising out of the submission of proposals or bids or the performance of work on public works projects or contracts?

☐ Yes
☒ No

If "yes," attach a sheet fully describing each such matter.

NOTE:

THIS DOCUMENT, IN ORDER TO BE CONSIDERED A VALID PROPOSAL MUST BE SIGNED BY A PRINCIPLE OFFICER OR OWNER OF THE BUSINESS ENTITY THAT IS SUBMITTING THE PROPOSAL. SUCH SIGNATURE CONSTITUTES THE PROPOSER'S REPRESENTATIONS THAT IT HAS READ, UNDERSTOOD AND FULLY ACCEPTED EACH AND EVERY PROVISION OF EACH DOCUMENT COMPRISING THE RFP INCLUDING THE PPA, UNLESS AN EXCEPTION IS DESCRIBED ABOVE.

Greensties Renewable Energy
FIRM NAME


SIGNED BY

7/22/15
DATE

10 Main St. Middletown CT 06457
ADDRESS

Andrew Chester EVP
PRINTED NAME AND TITLE

860-396-5408
TELEPHONE #

* The signatory must be an authorized representative of the proposer with full power and authority to execute this Disclosure Form.

This form must be signed and returned with bid

Exhibit E9

NON-COLLUSION BIDDING CERTIFICATE

The undersigned bidder acknowledges and agrees that the attached response and offer submitted by bidder is submitted in connection with the proposal to provide RFP Issuer with a Power Purchase Agreement ("PPA"). By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The prices set forth within this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit, a bid for the purpose of restricting competition.

In compliance with this invitation for bids, and subject to the conditions thereof, the undersigned offers and agrees that the RFP Issuer may rely upon both the within representations and the indemnifications set forth within the hold harmless agreement attached hereto as **Appendix A**.

Greenskios Renewable Energy
FIRM NAME

20 Main St. Middletown CT 06457
ADDRESS

[Signature]
SIGNED BY

Andrew Chertor EVP
PRINTED NAME AND TITLE

7/22/15
DATE

860-395-5408
TELEPHONE #

Subscribed and sworn to before me
this 22nd day of July, 2015

[Signature]
Notary Public

LUKE J. HESTER
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2018

This form must be signed and returned with bid

**APPENDIX A
RFP ISSUER BIDDER HOLD HARMLESS AGREEMENT**

Greensties Renewable Energy ("Bidder") hereby agrees that it will indemnify and save harmless the County of Erie from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against the County of Erie by reason of any omission or act of the bidder, its agents, employees, subcontractors in connection with that certain NON-COLLUSION BIDDING CERTIFICATE submitted herewith, to the extent permissible by law. This indemnification shall include all costs and disbursements incurred by the County of Erie in defending any suit, including attorneys' fees. Furthermore, at the option of the County of Erie, as the case may be, the bidder shall provide defense for and defend all claims, demands and causes of action referred to above, and bear all other costs and expenses related thereto.

Greensties Renewable Energy
FIRM NAME

10 Main St. Middletown CT 06457
ADDRESS

[Signature]
SIGNED BY

Andrew Cresto EVP
PRINTED NAME AND TITLE

7/22/15
DATE

860-398-5408
TELEPHONE #

Subscribed and sworn to before me
this 22nd day of July, 2015

[Signature]
Notary Public
LUKE J. HESTER
NOTARY PUBLIC
MY COMMISSION EXPIRES NOV. 30, 2018

This form must be signed and returned with bid

Exhibit E10

LEGAL STATUS FORM

Please fully complete the applicable section below, attached a separate sheet if you need additional space, and sign this form.

For purposes of this disclosure, "permanent place of business" means an office continuously maintained, occupied and used by the proposer's regular employees regularly in attendance to carry on the proposer's business in the proposer's own name. An office maintained, occupied and used by a proposer only for the duration of a contract will not be considered a permanent place of business. An office maintained, occupied and used by a person affiliated with a proposer will not be considered a permanent place of business of the proposer.

Please Check One:

Sole Proprietorship: ☐ Limited Liability Company: ☒ Corporation: ☐ Partnership: ☐

If a Sole Proprietorship

Proposer's Full Legal Name:

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes** ☐ **No** ☐

If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.
Street Address:

City: _____ State: _____ ZIP Code: _____

Mailing Address (if different from Street Address):

City: _____ State: _____ ZIP Code _____

Owner's Full Legal Name:

Number of years engaged in business under 'Sole Proprietor' or Trade Name:

If a Corporation

Proposer's Full Legal Name:

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes** ☐ **No** ☐

If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.

Proposer's Full Legal Name:

Street Address:

City:

State:

ZIP Code:

Mailing Address (if different from Street Address):

City:

State:

ZIP Code:

Owner's Full Legal Name:

Number of years engaged in business:

Name of Current Officers:

Chief Executive Officer:

President:

CFO/Treasurer:

Secretary:

If a Limited Liability Company

Proposer's Full Legal Name:

Greenskies Renewable Energy LLC

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes** ☐ **No** ☐

If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.

Street Address:

10 Main Street Suite E

City:

Middletown

State:

CT

ZIP Code:

06457

Mailing Address (if different from Street Address):

City:

State:

ZIP Code:

Owner's Full Legal Name:

Greenskies Renewable Energy LLC

Number of years engaged in business:

7

Number of Current Manager(s) or Member(s):

5

If a Partnership

Proposer's Full Legal Name:

Does the proposer have a "permanent place of business" in New York, as defined above? **Yes** ☐ **No** ☐

If yes, please provide full street address (Not a P.O. Box) of that "permanent place of business" below.

Street Address:

City:

State:

Zip Code:

Mailing Address (if different from Street Address):

City:

State:

Zip Code:

Owner's Full Legal Name:

Number of years engaged in business:

Names of Current Partner(s):

Greenskies Renewable Energy
FIRM NAME

10 Main St. Suite E
ADDRESS


SIGNED BY

Andrew Chester EVP
PRINTED NAME AND TITLE

7/22/15
DATE

800-398-5908
TELEPHONE #

* The signatory must be an authorized representative of the proposer with full power and authority to execute this Disclosure Form.

This form must be signed and returned with bid

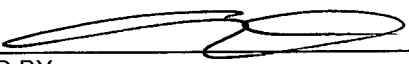
Exhibit E11

IRAN DIVESTMENT ACT CERTIFICATION

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Town of Guilderland receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Town of Guilderland will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Town of Guilderland shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

The Town of Guilderland reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

Greenskies Renewable Energy 10 Acule St - Suite E
FIRM NAME ADDRESS
 Andrew Chester EUP
SIGNED BY PRINTED NAME AND TITLE
7/22/15 800-398-5408
DATE TELEPHONE #
80-0480889
FEDERAL TAX IDENTIFICATION #

This form must be signed and returned with bid

PRIME CONTRACTOR AFFIDAVIT

- According to the best of my knowledge, I certify that all the following statements are true and accurate and are made under penalty of perjury. I agree to comply with Executive order 11246, New York State Article 15-A of the Executive Law, and Erie County Local Law No. 1 & 5 to achieve Minority and Women Business Enterprise goals assigned to this contract.
- I understand that only Erie County/City of Buffalo certified MBE & WBE owned and operated business enterprises will be credited towards fulfillment of the MBE & WBE utilization goals on this construction project.
- I will make every good faith effort to meet the MBE/WBE utilization goals in which contained in the contract.
- I affirm that I have no direct or indirect control over any MBE/WBE which I propose to use in fulfillment of the MBE/WBE utilization goals of this contract.
- I understand that I will not meet the MBE/WBE goal through arrangements with minority/female individuals of firms, which are not certified as participating minority business enterprises or women business enterprises.
- I understand and acknowledge that I will not perform any services and functions to such an extent that the MBE/WBE owner/operator does not manage and control its company
- I will only utilize MBE & WBE subcontractors and/or suppliers who are certified with Erie County/City of Buffalo.
- I understand that I am responsible for ensuring that MBE & WBE firms are utilized in order to further utilization goals. I understand that failure to utilize MBE & WBE firms are represented herein, will constitute a material breach of contract.
- The MBE/WBE firm will perform all the work and/or supply all the material covered under the prime contractor and subcontractor agreement. If change occurs, it is the prime contractor's responsibility to notify Erie County-EEO Office within 2 weeks.
- I understand that I will not withhold any payments that I agree on with MBE & WBE upon completion of the project.
- I understand that any misrepresentation of fact in this affidavit may lead to criminal prosecution under State and Federal law.
- The percentage (%) of MBE utilization goals for this contract is 10%
- The percentage (%) of WBE utilization goals for this contract is 2%.

7/22/15

Date

Greenshores Renewable Energy

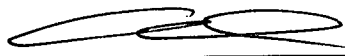
Name of Company

Main St. Suite E Middletown CT 06457

Address

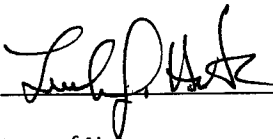
860-388-5408

Telephone No.



Authorized Signature

Sworn to me this 22ND day of July 20 15



Signature of Notary

LUKE J. HESTER
NOTARY PUBLIC

MY COMMISSION EXPIRES NOV. 30, 2018

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY CLERK'S OFFICE

BUFFALO, N.Y., OCTOBER 22, 2015

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, That at the **19th** Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the **twenty-second** day of **October, 2015 A.D.**, a Resolution was adopted, of which the following is a true copy:

WHEREAS, the County of Erie advertised for and received responses to a request for proposals from firms to provide solar photovoltaic (PV) systems for power purchase by Erie County; and

WHEREAS, a review committee consisting of representatives from Erie County Department of Public Works, the Division of Environmental Compliance, the Division of Sewerage Management, Buffalo State College, and Hodgson Russ ranked the responses using a consistent scoring matrix; and

WHEREAS, the proposal review committee recommends retaining SolarCity Corporation and/or Greenskies Renewable Energy, LLC for these services; and

WHEREAS, SolarCity Corporation and Greenskies Renewable Energy, LLC proposed the lowest power purchase agreement rates of the eight firms submitting proposals; and

WHEREAS, the nominal net benefit for the PV systems proposed is conservatively estimated to be \$9.5 million in savings over a 20-year term, based on concept level calculations.

NOW, THEREFORE, BE IT,

RESOLVED, that this Honorable Body endorses the proposal review committee recommendation to retain SolarCity Corporation and/or Greenskies Renewable Energy, LLC to install solar PV systems on County lands for power purchase by Erie County; and be it further

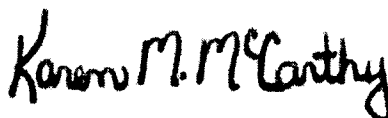
RESOLVED, that the County Executive be, and hereby is, authorized to execute power purchase agreements with SolarCity Corporation and/or Greenskies Renewable Energy, LLC, subject to approval as to content by either the Commissioner of the Department of Public Works or the Commissioner of the Department of Environment and Planning, and approval as to form by the County Attorney's office; and be it further

RESOLVED, prior to any construction work associated with the power purchase agreements, passage of a Local Law allowing for the lease of County land for a term longer than five (5) years shall be required; and be it further

RESOLVED, that the Clerk of the Legislature send one (1) certified copy each to the County Executive, the Erie County Comptroller, the Erie County Director of Budget and Management, the Commissioner of Public Works, the Commissioner of Environment and Planning, Eric Walker- Department of Public Works, and Kristen Walder, Assistant County Attorney.

REFERENCE: COMM. 17E-5 (2015)

ATTEST



KAREN M. McCARTHY

Clerk of the Legislature of Erie County