

## GUARANTY AGREEMENT

THIS **GUARANTY AGREEMENT** is made and dated as of November \_\_, 2010 by [Guarantor], a [state] [corporation] whose address is [address] (the "Guarantor"), to the Union County Improvement Authority (the "Authority"), the County of Union, New Jersey (the "County"), and each Local Unit (as such term is defined in the Contracts (defined below)).

### WITNESSETH

**WHEREAS**, the Authority, the [Company] (the "Company"), a [limited liability company] organized under the laws of the State of New Jersey, and [wholly-owned subsidiary of Guarantor], and certain Local Units have entered into a Power Purchase Agreement, Site License Agreement, [Company Lease Agreement, Pledge and Security Agreement, and Company Continuing Disclosure Agreement], each dated November \_\_, 2010 (each a "Contract", and collectively, the "Contracts"); and

[**WHEREAS**, the County has entered into a County Guaranty Agreement, dated November \_\_, 2010 ("County Guaranty"), in connection with the Authority's "County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2010", dated \_\_\_\_\_, 2010 (the "Bonds"), which Bonds are secured by, among other things, an assignment of the Contracts, all in connection with the Authority's Renewable Energy Program]; and

**WHEREAS**, the Authority and each Local Unit will enter into the Contracts, and the County will enter into the County Guaranty, only if the Guarantor guarantees the payment of all amounts required to be paid by the Company, and the performance by the Company of all of the Company's responsibilities and obligations, under each Contract as set forth in this Guaranty Agreement (the "Guaranty");

In order to induce the execution and delivery of the Contracts by the Authority and in consideration thereof, the Guarantor agrees as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

1.1. Definitions. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any capitalized word or term used but not defined herein is used as defined in the relevant Contract.

"Obligations" means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of each of the Contracts and Transaction Agreements.

"Transaction Agreement" means any agreement entered into by the Company or the Authority, the County or any Local Unit, in connection with the transactions contemplated by the

Contracts, including each Contract itself, financial agreements, and any other agreement or supplements thereto.

1.2. Interpretation. In this Guaranty, unless the context otherwise requires:

(a) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of the execution and delivery of this Guaranty.

(b) Gender and Plurality. Words of masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(c) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(d) Headings. The headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(e) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR**

2.1. Representations and Warranties of the Guarantor. The Guarantor hereby represents and warrants that:

(a) Existence and Powers. The Guarantor is a [corporation], duly organized and validly existing, in good standing, qualified to do business in the State of New Jersey, with full legal right, power and authority to enter into and perform its obligations under this Guaranty. The Guarantor owns an equity interest in the Company.

(b) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other similar laws affecting creditors’ rights generally.

(c) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (i) conflicts with, violates or results-in a breach of any law or governmental regulation applicable to the Guarantor,

(ii) conflicts, with violates or results in a material breach of any term or condition of, in the case of a guarantor that is not a natural person, the Guarantor's corporate charter or by-laws, or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (iii) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby or by any Transaction Agreement.

(d) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(e) No Litigation. There is no action, suit or other proceeding at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty or which would materially and adversely affect the performance by the Guarantor of its obligations hereunder.

(f) No Legal Prohibition. The Guarantor has no knowledge of an Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty.

(g) Consent to Contracts. The Guarantor is fully aware of and consents to the terms and conditions of each Contract.

(h) Consideration. This Guaranty is made in furtherance of the interests of Guarantor, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

### **ARTICLE III GUARANTY COVENANTS**

3.1. Guaranty to the Authority, the County and the Local Units. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the Authority, the County and each Local Unit that is a party to a Contract, for the benefit of the Authority, the County and each such Local Unit, (i) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under each Contract (including all amendments and supplements thereto) to, or for the account of, the Authority, the County or each Local Unit, as the case maybe, and (ii) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty.

3.2. Right of the Authority to Proceed Against Guarantor. This Guaranty shall constitute a Guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the Authority, the County and/or the Local Unit, as the case may be, shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the Authority, the County or the Local Unit may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the Authority, the County or Local Unit (i) file suit or proceed to obtain a personal judgment against the Company, (ii) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of any Contract or required to be given to the Company under Applicable Law, (iii) foreclosure against or seek to realize upon any security for the Obligations, or (iv) exercise any other right or remedy to which the Authority, the County or Local Unit is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under any such Contract. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company as may be required in connection with such Obligation, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the Authority's, the County's or the Local Unit's right to proceed directly against the Guarantor, such person (or any successor) shall not be entitled to more than full performance of the obligations in regards to any breach or non-performance thereof.

3.3. Guaranty Absolute and Unconditional. The obligations of the Guarantor hereunder are absolute, present, irrevocable, and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the Authority, the County, a Local Unit or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

(a) the extension of renewal of the Guaranty or any Contract up to the specified Terms of each Contract;

(b) any exercise or failure, omission or delay by the Authority, the County or any Local Unit in the exercise of any right, power or remedy conferred on such person with respect to this Guaranty or any Contract except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(c) any permitted transfer or assignment of rights or obligations under any Contract or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in a Renewable Energy Project or in, to or under any of the Transaction Agreements;

(d) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the Authority, the County or any Local Unit or any other person in any Transaction Agreement or in any Local Unit Facility;

(e) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Contract or Transaction Agreement;

(f) any failure of title with respect to all or any part of the respective interests of any person in the Site (as defined in the Site License) or the Local Unit Facility;

(g) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(h) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(i) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(j) the failure on the part of the Authority, the County or any Local Unit to provide any notice to the Guarantor which is not required to be given to the Company as a condition to the enforcement of Obligation's pursuant to any Contract;

(k) any failure of any party to the Transaction Agreements or any Contract to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement or Contract;

(l) the merger or consolidation of any party to the Transaction Agreements or any Contract into or with any person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(m) any legal disability or incapacity of any party to any Contract or any Transaction Agreements; or

(n) the fact that entering into any Transaction Agreement or Contract by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (a) through (n) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Contract or Transaction Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under any Contract or Transaction Agreement.

3.4. Defenses, Set-Offs and Counterclaims. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Contract or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Contract or the Guarantor has expressly waived in Section 3.5 or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Contract, if any. The Guarantor reserves the right to bring independent claims against the Authority or any Local Unit not arising from the Contract, provided however, any such claims shall not be used to set-off or deduct any claims which the Authority, the County or any Local Unit may have against the Guarantor arising from this Guaranty.

3.5. Waivers by the Guarantor. The Guarantor hereby unconditionally and irrevocably waives:

(a) notice from the Authority of its acceptance of this Guaranty;

(b) notice of any of the events referred to in Section 3.3 hereof except to the extent that notice is required to be given as a condition to the enforcement of Obligations;

(c) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Contract or Applicable Law as a condition to the performance of any Obligation;

(d) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(e) any right to require a proceeding first against the Company;

(f) any right to require a proceeding first against any person or the security provided by or under any Contract or Transaction Agreement except to the extent such Contract or Transaction Agreement specifically requires a proceeding first against any person (except the Authority, the County or any Local Unit, as the case may be), or security;

(g) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Contract or Transaction Agreement;

(h) the requirement of, or the notice of, the filing of claims by the Authority, the County or any Local Unit in the event of the receivership or bankruptcy of the Company; and

(i) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

3.6. Payment of Costs and Expenses. Each party to this Guaranty agrees to pay to the other on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), incurred by or on behalf of the party in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty

3.7. Subordination Of Rights. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the Authority, the County and each Local Unit hereunder and under each Contract and Transaction Agreement and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

3.8. Separate Obligations; Reinstatement. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (i) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (ii) give rise to separate and independent causes of action the Guarantor, and (iii) apply irrespective of any indulgence granted from time to time by the Authority, the County or any Local Unit. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that if for any reason any payment by or on behalf of the Company is rescinded or must be otherwise restored by the Authority, the County or any Local Unit, whether as a result of any proceedings

in bankruptcy, reorganization or similar proceeding unless such rescission or restoration is pursuant to the terms of the Contract, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

3.9. Term. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

## **ARTICLE IV GENERAL COVENANTS**

### 4.1. Maintenance of Corporate Existence.

(a) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (b) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (i) the successor entity (if other than the Guarantor) (A) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State, and (B) delivers to the Authority, the County and each Local Unit, an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and (ii) any such transaction does not, in the Authority's sole discretion, result in a decline in the credit standing of the Guarantor, or if Authority determines such transaction results in a decline in credit standing of the Guarantor, the Successor Guarantor shall provide credit enhancement as is reasonably acceptable to the Authority.

(b) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of the Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 4.1 and if such transaction results in a decline in credit standing of the Guarantor, the Successor Guarantor shall provide credit enhancement as is reasonably acceptable to the Authority.

4.2. Assignment. Without the prior written consent of the Authority, this Guaranty shall not be assigned by the Guarantor, except pursuant to Section 4.1 hereof.

4.3. Qualification in New Jersey. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in State.

4.4. Consent to Jurisdiction. The Guarantor irrevocably; (i) agrees that any suit, action or other legal proceeding arising out of this Guaranty shall be brought in the courts of the State of New Jersey; (ii) consents to the jurisdiction of such court in any such suit, action or proceeding; and (iii) waives any objection which it may have to the laying of the jurisdiction of any such suit, action or proceeding in any of such courts.

4.5. Binding Effect. This Guaranty shall inure to the benefit of the Authority, the County, each Local Unit and their permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

4.6. Amendments, Changes and Modifications. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the Authority (who shall be entitled to act for and on behalf of the County and each Local Unit) and of the Guarantor.

4.7. Liability. It is understood and agreed to by the Authority that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of an obligations hereunder, and no judgment, order or execution with respect to or in connection with the Guaranty shall be taken against any such director, officer, employee or stockholder.

4.8. Notices. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if faxed (with acknowledgement of receipt and followed by mailing of hardcopy), delivered in person, or sent by overnight courier to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to the Guarantor:

Phone:

Email:

If to Authority:

The Union County Improvement Authority  
10 Cherry Street  
Elizabeth, New Jersey 07202  
Attention: Mark Brink, Project Manager  
T: (908) 820-9710

F: (908) 820-9874  
ucia@verizon.net

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[GUARANTOR]  
As GUARANTOR

By \_\_\_\_\_  
Name:  
Title:

SEAL (IMPRESSED ON EXECUTION COPIES)

Accepted and Agreed to by:  
UNION COUNTY IMPROVEMENT AUTHORITY,  
UNION COUNTY, NEW JERSEY

BY: \_\_\_\_\_  
Title