

**LEASE PURCHASE AGREEMENT  
(Union County Renewable Energy Program, Series 2010)**

**By and Between**

**THE UNION COUNTY IMPROVEMENT AUTHORITY, as Lessor**

**and**

**[COMPANY], as Lessee**

**Dated as of \_\_\_\_\_, 2010**

with respect to The Union County Improvement Authority's  
\$\_\_\_\_\_ aggregate principal amount of  
County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2010

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**LEASE PURCHASE AGREEMENT**  
**(Union County Renewable Energy Program, Series 2010)**

THIS **LEASE PURCHASE AGREEMENT (Union County Renewable Energy Program, Series 2010)** (the “**Company Lease Agreement**”), dated as of \_\_\_\_\_, 2010, is made by and between **THE UNION COUNTY IMPROVEMENT AUTHORITY** (the “**Authority**” or “**Lessor**”), duly created by ordinance of the Board of Chosen Freeholders (“**Board of Freeholders**”) of the County of Union (the “**County**”), State of New Jersey (“**State**”) as a public body corporate and politic of the State pursuant to and in accordance with the provisions of the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof and supplemental thereto (as codified at N.J.S.A. 40:37A-44 *et seq.*, the “**Act**”) and other applicable law, and [COMPANY], a [limited liability company] organized and existing under the laws of the State of [state], duly authorized to conduct business in the State (the “**Company**” or “**Lessee**”).

**WITNESSETH**

**WHEREAS**, the Authority developed a program (the “**Renewable Energy Program**”) for the procurement, financing, design, permitting, acquisition, construction, installation, operation and maintenance of renewable energy projects, including solar panels, and any related electrical modifications or other work required in connection therewith for and on behalf of the Local Units at the Local Unit’s facilities (“**Renewable Energy Projects**”);

**WHEREAS**, it may be necessary in connection with the Renewable Energy Projects to make certain capital improvements to the Local Unit Facilities, including without limitation, improvements to or replacement of roofing systems (“**Capital Improvement Projects**” and with the Renewable Energy Projects and any Completion Projects, the “**Projects**”);

**WHEREAS**, in furtherance of the Renewable Energy Program, on August 31, 2010 the Authority issued a request for solar developer proposals (the “**RFP**”) in accordance with and pursuant to a competitive contracting process under: (i) in the case of municipalities and the County, N.J.S.A. 40A:11-4.1(k) (Local Public Contracts Law), and in the case of boards of education, N.J.S.A. 18A:18A-4.1(k) (Public Schools Contracts Law); (ii) New Jersey Department of Community Affairs, Division of Local Government Services (“**DLGS**”), Local Finance Notice 2008-20, dated December 3, 2008, entitled “Contracting for Renewable Energy Services, P.L. 2008, c. 83”; (iii) the protocol for measuring energy savings in PPA agreements, entitled “Public Entity Energy Efficiency and Renewable Energy Cost Savings Guidelines”, dated February 20, 2009, as approved by an Order of the State of New Jersey, Board of Public Utilities (“**BPU**”), dated February 27, 2009, in “In the Matter of a Comprehensive Energy Efficiency and Renewable Energy Resource Analysis for the 2009-2012: Guidelines for Calculating Energy Savings”, Docket No. EO09020128; and (iv) DLGS Local Finance Notice 2009-10, dated June 12, 2009, entitled “Contracting for Renewable Energy Services: Update on Power Purchase Agreements” ((i) through (iv), as amended and supplemented, are collectively

the “**State Procurement Laws**”);

**WHEREAS**, the Company is engaged in the business of financing, designing, permitting, acquiring, constructing, installing, operating and maintaining Renewable Energy Projects and submitted a proposal (the “**Company Proposal**”) in response to the RFP;

**WHEREAS**, the Authority accepted the Company Proposal, and pursuant to Authority resolution adopted [November 10,] 2010, entitled “RESOLUTION DETERMINING THE COMPANY TO THE SOLAR DEVELOPER REQUEST FOR PROPOSALS AND CERTAIN OTHER MATTERS IN CONNECTION WITH THE AUTHORITY’S RENEWABLE ENERGY PROGRAM”, the Authority procured the services of the Company to, at the Company’s cost and expense, design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects and, if required, Capital Improvement Projects, at the designated Local Unit facilities; and

**WHEREAS**, the Authority, each Local Unit and the Company are entering into (i) Site License Agreements, dated the date hereof (the “**License Agreement**”) that, among other things, provide the Company a right and license to access each Local Unit’s facilities to develop Renewable Energy Projects thereon, as more fully described therein, and (ii) a Power Purchase Agreement, dated the date hereof (the “**Power Purchase Agreement**”), pursuant to which the Company will design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects (and if required, Capital Improvement Projects), and to provide for the sale and purchase of energy generated therefrom;

**WHEREAS**, in order to implement the Renewable Energy Program, and to finance costs associated with the Renewable Energy Program that the Authority determines to be necessary, convenient or desirable for the successful implementation of the Renewable Energy Program, the Authority may engage in a project financing, which may include one or more series of bonds entitled “County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2010 (Federally Taxable)” dated their date of delivery, in the principal amount not to exceed \$25,000,000 (the “**Series 2010 Bonds**”);

**WHEREAS**, any Series 2010 Bonds may be issued pursuant to the terms of a certain “RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE BONDS, SERIES 2010 AND ADDITIONAL BONDS OF THE UNION COUNTY IMPROVEMENT AUTHORITY” adopted by the governing body of the Authority on \_\_\_\_\_, as amended and supplemented from time to time in accordance with its terms, including by a Certificate of an Authorized Officer of the Authority dated the date of issuance of the Series 2010 Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the “**Bond Resolution**”), all in accordance with Sections 17-19 of the Act (N.J.S.A. 40:37A-60, 61 and 62) and all other applicable law;

**WHEREAS**, Pursuant to N.J.S.A. 40:37A-78 of the Act, the Authority and the Company are entering into this Company Lease Agreement, which, among other things, (i) conveys to the Lessee a leasehold interest in and to the Leased Property that is part of the Renewable Energy Projects, (ii) obligates the Lessee to make Lease Payments in amounts sufficient for the Authority to pay debt service on, and its costs and expenses in connection with, the Series 2010 Bonds, and (iii) grants the Company an option to purchase the Leased Property at the end of the term hereof; and

**WHEREAS**, payment of the principal of (including mandatory sinking fund installments, if any) and interest on the Series 2010 Bonds, shall be secured by the Trust Estate as defined under and in accordance with the terms of the Bond Resolution, which shall include, among other things, (i) Lease Payments to be made by the Lessee hereunder, and (ii) rights under certain Program Documents, all in accordance with the terms of the Bond Resolution;

**NOW, THEREFORE**, in consideration of the premises and certain other consideration, the sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

## **ARTICLE I DEFINITIONS AND EXHIBITS**

### **Section 1.01. Definitions.**

(a) The terms set forth in this Section shall have the meanings ascribed to them for all purposes of this Company Lease Agreement unless the context clearly indicates some other meaning. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires. Terms used in this Company Lease Agreement and not otherwise defined shall have the meaning assigned to them in the Bond Resolution.

(b) The following defined terms shall have the respective meanings ascribed to such terms in the preambles hereof:

**Act**  
**Bond Resolution**  
**BPU**  
**Capital Improvement Projects**  
**County**  
**License Agreement**  
**Power Purchase Agreement**  
**Projects**  
**Renewable Energy Program**  
**Renewable Energy Projects**

## **Series 2010 Bonds**

(c) The following defined terms shall, for all purposes of this Company Lease Agreement, have the meanings ascribed to such terms in the Bond Resolution:

**Account**

**Administrative Expense Account**

**Company Development Fees and Expenses**

**Company Pledge Agreement**

**Cost**

**County Continuing Disclosure Agreement**

**County Security Fund**

**County Security Fund Requirement**

**Fund**

**Investment Securities**

**Official Statement**

**Outstanding**

**Preliminary Official Statement**

**Project Fund**

**Renewable Energy Program Interested Party**

**Revenues**

**Revenue Account**

**Revenue Fund**

**Rule 15c2-12**

**Series**

**Sinking Fund Installments**

**Tax-exempt Bonds**

**Trustee**

**Trust Estate**

(d) The following defined terms shall, for all purposes of this Company Lease Agreement, have the following meanings:

“**Acceptance Certificates**” shall mean, individually or collectively, as the case may be, the CIP Acceptance Certificates and the REP Acceptance Certificates.

“**Additional Lease Payment**” shall mean any amount payable by the Lessee at the times and under the other terms of this Company Lease Agreement, other than Basic Lease Payments, including without limitation, (i) Administrative Expenses, (ii) interest on any past due Lease Payments payable at the Overdue Rate (but not any such past due Basic Lease Payment), (ii) the Purchase Option Price in accordance with Section 7.01 hereof, and (iv) the Mandatory Purchase Price in accordance with Section 7.02 hereof.

**“Administrative Expenses”** shall mean the fees and expenses which are incurred from time to time by or on behalf of the Authority, the County, the County Security Provider, or the Local Units, including the Administrative Fee, if any, in carrying out their respective rights and duties under the terms of the Program Documents, including, without limitation the Preliminary Program Costs, accounting, administrative, financial advisory, and legal expenses, the Consulting Energy Engineering Services, the fees and expenses of the Construction Manager engaged by the Authority on behalf of certain Local Units, or engaged by the Local Units directly, the fees and expenses of the Architects engaged by the Authority on behalf of certain Local Units, or engaged by the Local Units directly, in either case in connection with their Projects, and the fees and expenses of the Trustee, any paying agents or any other fiduciaries or agents acting on behalf of the Authority, the County, or the Local Units, under or pursuant to the terms of the Program Documents, which amounts shall be due and payable by the Lessee as an Additional Lease Payment at the times set forth in the Program Documents, or, as applicable, upon presentation of an invoice for payment; provided, however, that to the extent an Administrative Expense is incurred solely due to the action or inaction of a Local Unit, such Administrative Expense shall be paid by such Local Unit.

**“Administrative Fee”** shall mean the sum of the following, payable by the Company to the Authority at the times and the amounts as set forth below:

(i) With respect to the Series 2010 Bonds upon initial issuance thereof, \$50,000 payable from a portion of the proceeds of the Series 2010 Bonds that have been deposited in the Costs of Issuance Account of the Administrative Fund pursuant to Section 2.03(7)(a)(i) of the Bond Resolution, which amount shall be credited against the Project Development Costs payable by Lessee pursuant to Section 6.1(c) of the Power Purchase Agreement; plus

(ii) Upon issuance of the Series 2010 Bonds, [\$700,000 - subject to adjustment as described in the RFP] payable from a portion of the proceeds of the Series 2010 Bonds that have been deposited in the Project Fund of the Bond Resolution, which amount shall be credited against the balance of the Project Development Costs payable by Lessee pursuant to Section 6.1(c) of the Power Purchase Agreement; plus

(iii) With respect to the Series 2010 Bonds for the first Bond Year upon initial issuance thereof, the Authority’s Annual Administrative Fee for the Renewable Energy Program in the amount of \$25,000 payable from a portion of the proceeds of the Series 2010 Bonds that have been deposited in the Administrative Expense Account of the Administrative Fund pursuant to Section 2.03(7)(a)(ii)(A) of the Bond Resolution, which amount shall be credited against the first Annual Administrative Fee payable by Lessee pursuant to Section 6.1(b) of the Power Purchase Agreement;

(iv) For each calendar year while the Series 2010 Bonds are outstanding, commencing January 1, 2012 and each January 1 thereafter, the amount of \$25,000 payable by

the Company as an Additional Lease Payment for deposit by the Trustee in the Administrative Expense Account of the Administrative Fund, which amount shall be credited against the Annual Administrative Fees payable by Lessee pursuant to Section 6.1(b) of the Power Purchase Agreement; plus

(v) With respect to any Series of Bonds, interest on any past due Basic Lease Payments payable at the Overdue Rate in accordance with the Company Lease Agreement (but not any such past due Basic Lease Payment).

“**Applicable**” shall mean (i) with reference to any Local Unit, the Local Unit intended to be benefited or obligated thereby, (ii) with reference to any Renewable Energy Project, the Renewable Energy Project for the intended Local Unit, (iii) with reference to any Local Unit Facilities, the Local Unit Facilities for the intended Local Unit, and (iv) with reference to any License Agreement, the License Agreement executed for the benefit of the intended Local Unit.

“**Architect**” shall mean individually or collectively, as the case may be, the individual or entity appointed or caused to be appointed or employed by the Applicable Local Unit, the Lessor, or the Lessee, as applicable, with respect to the provision of architectural services relating to the Renewable Energy Projects or the Capital Improvement Projects on, in, affixed or adjacent to, or otherwise for the benefit of the Local Unit Facilities for such Applicable Local Unit, all in accordance with applicable law, which may include the Local Public Contracts Law or the Public Schools Contracts Law, including any rules and regulations relating thereto and to which such Applicable Local Unit, the Lessor, or the Lessee is subject, including without limitation any architect of record with respect to such Projects and/or Local Unit Facilities. The Architect may be a Contractor providing services pursuant to a Development Contract.

“**Authorized Officer**” or “**Authorized Representative**” shall mean, (i) with respect to the Authority: the Chairperson, the Vice Chairperson, the Treasurer, or the Secretary of the Authority and, when used with reference to an act or document, also means any other person who shall be authorized by resolution or the by-laws of the Authority to perform such act or to execute such document or any other person or persons who shall be authorized by resolution of the Authority to act on behalf of the Authority or by a written certificate duly executed on behalf of the Authority by the Chairperson or by the Vice Chairperson of the Authority, which certificate shall set forth such authorization and shall contain the specimen signatures of each such person; (ii) with respect to any Local Unit: the person designated as an Authorized Officer in a Program Document of any such Local Unit or any other person or persons who shall be authorized to act on behalf of such Local Unit by virtue of a resolution of the governing body of such Local Unit, which resolution shall set forth such authorization; (iii) with respect to the Trustee: any officer of the Trustee authorized by the Trustee to act or execute documents on behalf of the Trustee; (iv) with respect to Company: any officer of the Company authorized by the Company to act or execute documents on behalf of the Company; (v) with

respect to the County Security Provider: any officer of the County Security Provider authorized by the County Security Provider to act or execute documents on behalf of the County Security Provider; (vi) with respect to the County in any capacity other than clause (ii) above, the County Administrator of the County and, when used with reference to an act or document, also means any other person who shall be authorized by State statute, ordinance, resolution, by-laws or Administrative Code of the County to perform such act or to execute such document or any other person or persons who shall be authorized by resolution or ordinance of the Board of Freeholders to act on behalf of the County or by a written certificate duly executed on behalf of the County by the County Administrator of the County, which certificate shall set forth such authorization and shall contain the specimen signatures of each such person.

“**Base Rate**” means for each calendar month, the lower of (1) the highest “prime rate” as published in The Wall Street Journal under the heading “Money Rates” on the first day of such month that such rates are published, and (2) the maximum rate allowed by law.

“**Basic Lease Payment**” shall mean, as of each Basic Lease Payment Date, the amount set forth in **Exhibit A-3** to the Company Lease Agreement corresponding to such Basic Lease Payment Date and designated as a Basic Lease Payment. The Basic Lease Payment as of any Basic Lease Payment Date is equal to the payment of the Principal Portion and Interest Portion due on such Basic Lease Payment Date, and shall be established as the amount set forth in **Exhibit A-3** to this Company Lease Agreement for such date, less other amounts available under the Bond Resolution, if any.

“**Basic Lease Payment Date**” shall mean each date set forth in **Exhibit A-3** to this Company Lease Agreement and designated as a Basic Lease Payment Date, which for the Interest Portion and Principal Portion of any Basic Lease Payment shall be the first day of each calendar month, and if such day is not a Business Day, the first Business Day prior to such date.

“**Bondholder**,” “**Bond Holder**,” “**Holder**” or “**Holder of Bonds**” shall mean the registered owner of any Series of Bonds of the Authority, including the Authority’s Series 2010 Bonds.

“**Business Day**” shall mean, with respect to the Series 2010 Bonds, any day other than (i) a Saturday, Sunday or legal holiday or a day on which banking institutions, in the city in which the Principal Office of the Authority, any Local Unit, the Trustee or the Paying Agent is located, are closed, or (ii) a day on which the New York Stock Exchange is closed.

“**Certificate**” shall mean a written certificate signed in the name of the Authority, any Local Unit, the County, the Company or the Trustee. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the instruments so combined shall be read and construed as a single instrument.

“**CIP Acceptance Certificates**” shall mean the certificates, one for each Local Unit with respect to the acceptance and completion of the Capital Improvement Projects on, in or about the Local Unit Facilities for each such Local Unit, in the form attached as **Exhibit B-2** to this Company Lease Agreement, evidencing, among other things, that all of the Capital Improvement Projects for each such Local Unit has been completed in accordance with the Plans and Specifications therefor, and has been accepted by such Local Unit.

“**CIP Acceptance State**” shall mean the good working order condition of the Capital Improvement Projects for the Local Units, at the time of the authorization, execution and delivery of, and as certified and acknowledged by such Applicable Local Units in, the respective CIP Acceptance Certificates.

“**Company Appendices**” shall mean that portion of the Preliminary Official Statement and the Official Statement relating to the Company or any parent entity or guarantor of its obligations hereunder, including the appendices thereof, which may include financial, demographic or other information supplied by or on behalf of the Company, or a link or other reference to such information, all as shall be designated in the Company Continuing Disclosure Agreement, and as to which the Company shall make certain certifications under federal securities law.

“**Company Documents**” means the Power Purchase Agreement, the License Agreement, this Company Lease Agreement, the Company Continuing Disclosure Agreement, the Pledge and Security Agreement, and any other documents or agreements in connection with the Renewable Energy Program to which the Company is a party.

“**Completion Date**” shall mean December 9, 2011.

“**Completion Project**” shall mean any work not contemplated by the RFP, or the Plans and Specifications, that is agreed to in writing between the Lessee and Lessor.

“**Construction Manager**” shall mean, individually or collectively, as the case may be, the person or firm hired, employed or otherwise engaged by either of the Lessor or any Local Unit, that shall be responsible for the oversight of the implementation of one or more segments of the design, permitting, acquisition, construction, and installation, and as applicable, the operation and maintenance of the Renewable Energy Projects by the Lessee for any Local Unit, or the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects by the Lessee for any Local Unit.

“**Contractor**” shall mean the Company, or any other subcontractor or other third-party designated by the Company through a Development Contract or otherwise, in either case as the entity obligated to design, permit, acquire, construct, install, operate and/or maintain all or a portion of the Renewable Energy Projects on the Local Unit Facilities for the Local Units, or to

design, permit, acquire, construct, renovate and/or install all or a portion of the Capital Improvement Projects on the Local Unit Facilities for the Local Units.

**“Development Contract”** shall mean (i) in the case of the Company, the Company Lease Agreement, and (ii) in the case of any other Contractor, that certain contract obligating any such other subcontractor or other third-party, as Contractor and on behalf of the Company, to design, permit, acquire, construct, install, operate and/or maintain all or a portion of the Renewable Energy Projects on the Local Unit Facilities for the Local Units, or to design, permit, acquire, construct, renovate and/or install all or a portion of the Capital Improvement Projects on the Local Unit Facilities for the Local Units. Nothing in any Development Contract shall relieve the Contractor from its obligations under the Company Lease Agreement and the other Company Documents, which obligations shall include the Company’s continual obligation to design, permit, acquire, construct, install, operate and/or maintain all of the Renewable Energy Projects on the Local Unit Facilities for the Local Units, and to design, permit, acquire, construct, renovate and/or install all of the Capital Improvement Projects on the Local Unit Facilities for the Local Units.

**“Draw Date”** shall have the meaning ascribed to such term in Section 5.10(b) of this Company Lease Agreement, and shall not be a regularly scheduled set of dates, but shall occur no more frequently than once a month.

**“Draw Papers”** shall have the meaning ascribed to such term in Section 5.10(c) of this Company Lease Agreement.

**“Event of Default”** shall have the meaning ascribed to such term in Section 10.01 of this Company Lease Agreement.

**“Independent Insurance Consultant”** shall mean a nationally recognized, independent actuary, insurance company or broker acceptable to the Lessor that has actuarial personnel experienced in the area of insurance for which the Lessee is to be self-insured.

**“Interconnection Agreement”** shall mean, individually or collectively, as the case may be, one or more agreements between or among, the existing local electric utility distribution provider and one or more of the Lessee, the Applicable Local Unit and/or the Lessor, with respect to the interconnection of the completed Renewable Energy Projects for such Local Unit to the electric utility distribution system of such provider, which may take the form of an application and acceptance by at least two of such parties.

**“Interest Payment Date”** shall mean, (i) the first day of each calendar month, and if such day is not a Business Day, the first Business Day prior to such date, (ii) or the date of redemption or acceleration of the Series 2010 Bonds.

**“Interest Portion”** shall mean, with respect to Basic Lease Payments due on any Basic Lease Payment Date, the interest due and owing, as set forth in **Exhibit A-3** to this Company Lease Agreement.

**“Lease Payments”** shall mean all amounts due and payable by the Company pursuant to the terms of the Company Lease Agreement, and shall consist of Basic Lease Payments and the Additional Lease Payments.

**“Lease Term”** or **“Term”** shall mean the period during which this Company Lease Agreement is in effect, as specified in Section 4.02 hereof.

**“Leased Property”** shall mean the equipment comprising the Renewable Energy Project at each Local Unit Facility, which shall include the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, wiring devices and wiring as may be more specifically described in **Exhibit A-3** to this Company Lease Agreement. It is intended that the Leased Property shall include all property eligible for the Energy Credit under Section 48 of the Internal Revenue Code of 1986, as amended. The Leased Property shall not include, without limitation, the Capital Improvement Projects of the Local Units, all of which shall be owned by the Applicable Local Units.

**“Local Unit”** shall mean each local governmental unit, including the County, that is a party to the Power Purchase Agreement and has executed a License Agreement.

**“Local Unit Facilities”** means the facilities of each Local Unit upon or at which a Renewable Energy Project is installed. Subject to any substitution following the execution of this Agreement, the Local Unit Facilities shall be set forth in the License Agreement.

**“Mandatory Purchase Price”** shall have the meaning ascribed to such term in Section 7.02 of this Company Lease Agreement relating to the acceleration of the Bonds of any Series, including the Series 2010 Bonds.

**“Maximum Bond Funded Project Cost Amount”** shall mean seventy percent (70%) of the Total Project Costs, but only to the extent such Total Project Costs amount is accepted and approved by the Lessor.

**“Net Proceeds”** shall mean any insurance, condemnation, performance bond, or any other financial guaranty proceeds paid with respect to any portion of the Projects, remaining after payment therefrom of all expenses incurred in the collection thereof; and, with respect to insurance, if and at such time as the Lessee elects to provide self-insurance under Section 6.14 of this Company Lease Agreement, any moneys payable from any self-insurance fund of the Lessee which may lawfully be expended for the purposes for which such self-insurance is provided.

**“Overdue Rate”** shall mean two percent (2%) per annum over the Base Rate; *provided, however,* that notwithstanding the foregoing, to the extent the County Security shall have been drawn upon to reimburse the County in full for any County payments under the County Guaranty, the Overdue Rate with respect to interest to be paid on past due Basic Lease Payments (such payment of interest constituting an Additional Lease Payment hereunder) shall have such different meaning, if any, as may be set forth in the County Security Agreement.

**“Permitted Encumbrances”** shall mean as of any particular time: (i) liens for governmental taxes and assessments not then delinquent with respect to the Leased Property, (ii) the Lessor’s interest in this Company Lease Agreement and the other Program Documents, and (iii) the pledge of the Trust Estate by the Lessor to the Trustee under the Bond Resolution.

**“Plans and Specifications”** shall mean the architectural and engineering drawings and specifications prepared by the Architect or other Contractor (through a Development Contract or otherwise) describing the Renewable Energy Projects or the Capital Improvement Projects, including any Completion Project, as the case may be, as agreed to among the Company and the Applicable Local Unit pursuant to Section 5.01 of this Company Lease Agreement.

**“Power Purchase Price Payments”** shall mean the amounts paid by the Applicable Local Units to, or for the benefit of, the Company for the purchase of electricity, in accordance with the Power Purchase Agreement.

**“Principal Payment Date”** shall mean, (i) the first day of each calendar month, and if such day is not a Business Day, the first Business Day prior to such date, (ii) or the date of redemption or acceleration of the Series 2010 Bonds.

**“Principal Portion”** shall mean, with respect to Basic Lease Payments due on any Basic Lease Payment Date, the principal due and owing as set forth in **Exhibit A-3** attached to this Company Lease Agreement.

**“Program Documents”** means the RFP, the Service Agreement, dated as of \_\_\_\_\_, 2010, between the Authority and the County in connection with the Renewable Energy Program, the Series 2010 Bonds, the Bond Resolution, this Company Lease Agreement, the County Guaranty (including the County Guaranty Agreement) and the Company Documents.

**“Project Development Costs”** means the preliminary costs incurred by or on behalf of the Authority or the Local Units in developing the Series 2010 Program, estimated at the time of the RFP in the aggregate amount of \$750,000.00 (including consulting, legal, financial advisory, construction management and bond issuance costs), to be adjusted in accordance with Section 4.1(d) of the RFP.

“**Purchase Option Price**” shall have the meaning ascribed to such term in Section 7.01 hereof relating to the optional redemption of the Bonds of any Series, including the Series 2010 Bonds.

“**REP Acceptance Certificates**” shall mean the certificates, one for each Local Unit with respect to the acceptance and completion of the Renewable Energy Projects on, in or about the Local Unit Facilities for each such Local Unit, in the form attached as **Exhibit B-1** to this Company Lease Agreement, executed by an Authorized Officer of the Company, acknowledged by an Authorized Officer of the Applicable Local Unit, and acknowledged as to form only by an Authorized Officer of the Authority, evidencing, among other things, that all of the Renewable Energy Projects for each such Local Unit has been completed in accordance with the Plans and Specifications therefore, and has been accepted by the Company and the Local Unit, and determining any matters regarding the application of excess funds in accordance with Section 5.02 of the Bond Resolution.

“**Total Project Costs**” means the sum of the Project Development Costs, the Renewable Energy Project Costs and the Capital Improvement Project Costs, as set forth in Form A-1 of the Company Proposal, as the same may be adjusted pursuant to the terms of the Renewable Energy Program and the Program Documents. Such amount is intended to be the total amount required to pay all of the costs to design, permit, acquire, construct, and install all of the Renewable Energy Projects and to design, permit, acquire, construct, renovate, and install all of the Capital Improvement Project Costs, in either case for all of the Local Units on, in or about their Local Unit Facilities and in accordance with the Plans and Specifications.

#### **Section 1.02. Exhibits.**

The following Exhibits are attached to, and by reference are made a part of, this Company Lease Agreement pursuant to which the Project is to be leased by the Lessee:

(a) **Exhibit A:** Various details regarding a description of the Projects, the schedule of regularly scheduled Basic Lease Payments and maximum project costs funded from the Series 2010 Bonds.

(i) **Exhibit A-1.** Description of Renewable Energy Projects for Local Units;

(ii) **Exhibit A-2:** Description of Capital Improvement Projects for Local Units;

(iii) **Exhibit A-3:** Basic Lease Payment Schedule; and

(iv) **Exhibit A-4:** Notice Information for Local Units.

- (b) **Exhibit B:** Form of Acceptance Certificates, consisting of:
  - (i) **Exhibit B-1.** Form of REP Acceptance Certificates; and
  - (ii) **Exhibit B-2.** Form of CIP Acceptance Certificates.
- (c) **Exhibit C:** Form of Draw Papers.
  - (i) **Exhibit C-1.** Initial Project Workforce Form AA201.
- (d) **Exhibit D:** Certificate of an Authorized Officer of the Lessee for Company Development Fees and Expenses Incurred on behalf of the Lessee.
- (e) **Exhibit E:** Form of Company Continuing Disclosure Agreement.

**Section 1.03 Controlling Agreements.** This Company Lease Agreement is entered into in connection with the Renewable Energy Program. This Company Lease Agreement is intended to supplement, and not derogate from, the Program Documents, including the Power Purchase Agreement and License Agreement. In the event of any conflict between the terms of this Company Lease Agreement and any other Program Document, including the Power Purchase Agreement and License Agreement, the agreement imposing the greatest restrictions on, or obligations of, Licensee shall prevail, unless otherwise directed by Lessor, which it shall exercise in its sole discretion.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS**

**Section 2.01. Representations, Covenants and Warranties of Lessee.** The Lessee represents, covenants and warrants as follows:

(a) The Lessee (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, and (ii) has all requisite power and authority, and as applicable, all requisite governmental licenses, authorizations, consents and approvals, to (A) own or lease its assets and carry on and transact its business, including without limitation the conduct of business within the State in accordance with the terms of the Company Documents, and (B) authorize, execute, deliver and perform its obligations under the Company Documents, and (iii) is duly qualified and is licensed and, as applicable, is in good standing under the laws of each jurisdiction, including the State, where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license. The Lessee has all of the requisite power and authority and has full legal right to (x) enter into each of the Company Documents, (y) perform, observe and comply with all of its respective agreements and obligations under the Company Documents.

(b) The Constitution and the laws of the State and the jurisdiction of the Lessee's organization authorize the Lessee to, and the Lessee has the right, power, authority and expertise to, and shall (i) design, permit, acquire, install, operate and maintain the Renewable Energy Projects on, in, affixed or adjacent to, or for the benefit of the Local Unit Facilities for all of the Local Units in accordance with the requirements of Appendix B-2 and Appendix B-3 of the RFP and the technical specifications set forth in Appendix C of the RFP and otherwise in accordance with the terms of the Program Documents, (ii) design, permit, acquire, renovate, and install, the Capital Improvement Projects on, in, affixed or adjacent to, or for the benefit of such Local Unit Facilities in accordance with the plans and specifications and construction documents included or referred to in Appendix B-2 of the RFP and otherwise in accordance with the terms of the Program Documents, (iii) enter into the Company Documents and to consummate the transactions and perform the obligations contemplated thereby. Notwithstanding the foregoing (including without limitation the dates set forth in the RFP), the Lessee shall in all circumstances commence construction of the Renewable Energy Projects on or before \_\_\_\_\_, and complete construction and file all Acceptance Certificates for all Projects in accordance with the provisions of Section 5.10(e) hereof no later than the Completion Date.

(c) The execution and delivery by the Lessee of the Company Documents, the performance by the Lessee of all of its respective agreements and obligations under each of such documents, and the incurring by the Lessee of all of the obligations contemplated by the Company Documents, have been duly authorized by all necessary requisite actions on the part of the Lessee, and the provisions of the Company Documents do not and shall not (i) contravene any provision of the Lessee's certificate of incorporation, by-laws and any other organizational documentation (each from time to time in effect), (ii) conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, or result in the creation of any mortgage, lien, pledge, charge, security interest or other encumbrance upon any of the property of the Lessee under any material agreement, mortgage or other instrument to which the Lessee is or may become a party, other than Permitted Encumbrances, (iii) to the best of the Lessee's knowledge, violate or contravene any provision of any law, regulation, order, ruling or interpretation under any material agreement, mortgage or other instrument to which the Lessee is or may become a party, or any decree, order or judgment of any court or governmental or regulatory authority, bureau, agency or official (all as from time to time in effect and applicable to such entity), (iv) require any waivers, consents or approvals by any of the creditors or trustees for creditors of the Lessee, or (v) to the best of Lessee's knowledge, require any approval, consent, order, authorization, or license by, or giving notice to, or taking any other action with respect to, any governmental or regulatory authority or agency except those actions that have been taken or shall be taken prior to the date of execution and delivery hereof and prior to the date of issuance of the Series 2010 Bonds, under any provision of Applicable Law.

(d) The officers of the Lessee executing and delivering its Company Documents have been duly authorized to execute and deliver the same under the laws of the State and the state of its incorporation and under its articles of incorporation, by-laws and any

other organizational documentation, and upon the Lessee's execution and delivery of the Company Documents, assuming the valid execution and delivery thereof by the other parties thereto, the Company Documents shall constitute valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms.

(e) There is no action, suit, proceeding or investigation at law or in equity by or before any court or public agency against the Lessee or, to the best of the Lessee's knowledge, threatened against the Lessee (or, to the best of the Lessee's knowledge, is there any basis therefore) (i) that contests or would contest the Lessee's authority for, its authorization or performance of, or its expenditure of funds pursuant to any Company Document, or (ii) wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated by the Program Documents or the validity of said documents or (B) any agreement or instrument to which the Lessee is a party and that is used or contemplated for use in consummation of the transactions contemplated by the Program Documents.

(f) The Lessee has complied with laws applicable to the Lessee, the satisfaction of which is a condition precedent to either or both of the design, permitting, acquisition, installation, operation and maintenance of the Renewable Energy Projects on, in, affixed or adjacent to, or for the benefit of the Local Unit Facilities for all of the Local Units, or the design, permitting, acquisition, renovation, and installation of the Capital Improvement Projects on, in, affixed or adjacent to, or for the benefit of such Local Unit Facilities, all as contemplated by the Program Documents.

(g) Except for Permitted Encumbrances or as otherwise provided under the terms of the Program Documents, the Lessee shall not transfer, lease, assign, mortgage or encumber the Projects or the Trust Estate.

(h) The Lessee currently intends to continue this Company Lease Agreement for its entire Term and to pay all Basic Lease Payments and Additional Lease Payments required hereunder, unless the Lessee shall pay and otherwise comply with the terms related to the Purchase Option Price in accordance with Article VII hereof.

(i) Information supplied and statements made by the Lessee in any financial statement or current budget delivered prior to or contemporaneously with this Company Lease Agreement, including the Company Appendices, present such information fairly, accurately and completely, in all material respects and in accordance with generally accepted accounting principles, consistently applied. The Lessee agrees to take all actions reasonably requested by Lessor in connection with the Authority's marketing and sale of the Series 2010 Bonds, including without limitation executing Certificates of an Authorized Officer of the Lessee (i) regarding the deemed final nature of the Company Appendices for purposes of MSRB Rule 15c2-12, and (ii) to the effect that the Company Appendices, and any other information concerning the Company or its rights, duties and obligations under the Program Documents set forth in the Preliminary Official Statement and the Official Statement (A) contain no material

misstatement of fact and (B) do not omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, materially misleading, and executed and delivering a Company Continuing Disclosure Agreement in substantially the form appended hereto as part of **Exhibit E**.

(j) Information provided by Lessee, upon which Lessor relied in selecting Lessee under the RFP process, remains materially accurate.

**Section 2.02. Representations, Covenants and Warranties of Lessor.** The Lessor represents, covenants and warrants as follows:

(a) The Lessor (i) is a public body corporate and politic duly organized, validly existing and in good standing under the Act and other applicable laws of the State, (ii) has full and complete power to enter into or adopt, as the case may be, the Program Documents and to carry out the transactions contemplated thereby, (iii) is possessed with full power to own and hold real and personal property, including the Renewable Energy Projects, and to lease the Leased Property subject to the terms of the Act and any other applicable law, and (iv) has duly authorized the execution and delivery of or has duly adopted, as the case may be, the Program Documents.

(b) Neither the execution and delivery or adoption, as the case may be, of the Program Documents, the fulfillment of or compliance with the terms and conditions thereof, nor the consummation of the transactions contemplated thereby conflicts with or results in a breach of the terms, conditions or provisions of any restriction, any agreement or any instrument to which the Lessor is now a party or by which the Lessor or its property are bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Lessor or upon the Projects, except Permitted Encumbrances.

(c) The execution and delivery by the Lessor of the Program Documents, the performance by the Lessor of all of its respective agreements and obligations under each of the Program Documents, and the incurring by the Lessor of all of the obligations contemplated by the Program Documents, have been duly authorized by all necessary requisite actions on the part of the Lessor, and the Lessor's authorization, execution, delivery and performance pursuant to the terms of the Program Documents do not and shall not (i) contravene any provision of the Act, (ii) conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, or result in the creation of any mortgage, lien, pledge, charge, security interest or other encumbrance upon any of the property of the Lessor under any material agreement, mortgage or other instrument to which the Lessor is or may become a party, other than Permitted Encumbrances, (iii) to the best of the Lessor's knowledge, violate or contravene any provision of any law, regulation, order, ruling or interpretation thereunder or any decree, order or judgment of any court or governmental or regulatory authority, bureau, agency or official (all as from time to time in effect and applicable to such entity), (iv) require any waivers, consents or approvals by

any of the creditors or trustees for creditors of the Lessor, or (v) to the best of Lessor's knowledge, require any approval, consent, order, authorization, or license by, or giving notice to, or taking any other action with respect to, any governmental or regulatory authority or agency except those actions that have been taken or shall be taken prior to the date of issuance of the Series 2010 Bonds, under any provision of any applicable law.

(d) The officers of the Lessor executing and delivering its Program Documents have been duly authorized to execute and deliver the same under the Act, and upon the Lessor's execution and delivery of the Program Documents, assuming the valid execution and delivery thereof by the other parties thereto, the Program Documents shall constitute valid and binding obligations of the Lessor, enforceable against the Lessor in accordance with their respective terms.

(e) There is no action, suit, proceeding or investigation at law or in equity by or before any court or public agency against the Lessor or, to the best of the Lessor's knowledge, threatened against the Lessor (or, to the best of the Lessor's knowledge, is there any basis therefore) (i) that contests or would contest the Lessor's authority for, its authorization or performance of, or its expenditure of funds pursuant to any Program Document or that would preclude the Lessor from performing in accordance with the terms of any Program Document or (ii) wherein an unfavorable decision, ruling or finding would adversely affect (A) the transactions contemplated by the Program Documents or the validity of said documents or (B) any agreement or instrument to which the Lessor is a party and that is used or contemplated for use in consummation of the transactions contemplated by the Program Documents.

(f) Except for Permitted Encumbrances or as otherwise provided under the terms of the Program Documents, the Lessor shall not transfer, lease, assign, mortgage or encumber the Projects or the Trust Estate.

(g) Upon the exercise by the Lessee of its option to purchase the all of the Leased Property pursuant to Article VII hereof, the Lessor (i) shall deliver to the Lessee all of the documents that are or may be necessary to vest all of the Lessor's right, title and interest in and to the Leased Property in the Lessee, and (ii) shall release all liens and encumbrances created under this Company Lease Agreement, or the other Program Documents with respect to the Leased Property, all as provided in Article VII hereof.

### **ARTICLE III LEASE PAYMENTS**

#### **Section 3.01. Lease Payments.**

(a) The Lessee agrees to pay to, or at the direction of, the Lessor the following Lease Payments, as rent for the Leased Property for the Term hereof, in immediately

available funds, no later than when due:

(i) Basic Lease Payments, as set forth in Sections 3.05 and 3.06 hereof and **Exhibit A-3** hereof, on each Basic Lease Payment Date; and

(ii) Additional Lease Payments, as set forth in Section 3.08 hereof.

(b) The Lessee shall be entitled to a credit against Basic Lease Payments for unused moneys held in the Project Fund in accordance with Section 5.10(e) hereof, and for earnings on other Funds held by the Trustee and certain other Revenue Fund transfers in accordance with Section 3.10 hereof, all at the times and in the amounts and determined in accordance with the provisions of the Bond Resolution and this Company Lease Agreement. Such credits, if applicable, shall be applied first to the Interest Portion of Basic Lease Payments then due, second to Additional Lease Payments, if any, then due, and third to the Principal Portion of Basic Lease Payments.

(c) All Lease Payments shall be made in immediately available funds by wire transfer to the institution and account as directed by the Lessor.

**Section 3.02. Lease Payments to be Unconditional; No Abatement or Set-Off.**

(a) The obligation of the Lessee to make Lease Payments in full and when due shall be absolute and unconditional in all events, including without limitation any circumstance regarding the Projects, regardless of whether any such event shall be foreseen or otherwise, and regardless of whether any such event shall occur by accident, force majeure (as such term may defined in any Program Document) or otherwise. The Lessee hereby acknowledges and irrevocably covenants that the terms of this Company Lease Agreement create a valid and binding obligation of the Lessee to make Lease Payments from any available source under all circumstances.

(b) Notwithstanding any dispute between the Lessor and the Lessee, or between or among any party hereto and any one or more of any Renewable Energy Program Interested Party or any other person, in any case concerning any provision of any Program Document, the Lessee shall make all Lease Payments in full and when due, and the Lessee shall not withhold any Lease Payment pending final resolution of such dispute, nor shall the Lessee assert against the Lessor, the Trustee, any Renewable Energy Program Interested Party or any other person any right of set-off, recoupment or counterclaim against its obligation to make such Lease Payments, regardless of whether or not the Projects are completed, available for use, or used by the Lessee or any other Renewable Energy Program Interested Party, as applicable.

(c) If the Lessor should fail to perform any obligation hereunder, the Lessee may institute such legal action against the Lessor as the Lessee may deem necessary to compel the performance of such obligation, but if and only if the Lessee is not in default under the terms

of this Company Lease Agreement and if the Lessee shall have paid all amounts that are required to be paid pursuant to the terms of this Company Lease Agreement; and if the Lessee shall have performed all of its obligations under the terms of this Company Lease Agreement and continues to pay and perform as provided herein, the Lessee shall not be precluded from bringing any action it may otherwise have against the Lessor.

**Section 3.03. Termination of Lease Term; Lease Payment Obligation.** The Lessee shall not terminate this Company Lease Agreement (other than such termination as is provided for under the terms of this Company Lease Agreement) or be excused from its obligations hereunder, including without limitation its obligations to make Lease Payments, for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title or frustration of purpose, any damage to or destruction of any Project, the taking by eminent domain of title or the right of temporary use of all or any part of any Project, or the failure of the Lessor or any other Renewable Energy Program Interested Party to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation that arises out of or that is related to this Company Lease Agreement or any other Program Document.

**Section 3.04. Reserved.**

**Section 3.05. Basic Lease Payments; Principal Portion.** The Principal Portion of Basic Lease Payments shall be due on each Basic Lease Payment Date in the amounts set forth on **Exhibit A-3** hereto.

**Section 3.06. Basic Lease Payments; Interest Portion.** The Interest Portion of Basic Lease Payments shall be due on each Basic Lease Payment Date in the amounts set forth on **Exhibit A-3** hereto.

**Section 3.07. Interest Calculation.** The Interest Portion of Basic Lease Payments shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

**Section 3.08. Additional Lease Payments.**

(a) At the times required in the definition of “Administrative Fee”, the Lessee shall pay the Administrative Fee to the Trustee as an Additional Lease Payment.

(b) The Lessee shall pay to the Trustee when due, as an Additional Lease Payment, reasonable compensation for all services rendered by the Trustee pursuant to the Bond Resolution, all reasonable expenses, charges, counsel fees and other disbursements (including those of the Trustee’s attorneys, agents and employees) incurred in connection with the performance of its powers and duties under the Bond Resolution, and any other Administrative Expenses.

(c) The Lessee shall immediately pay to the Trustee, as an Additional Lease Payment, interest on any past due Lease Payment at the Overdue Rate in accordance with Section 10.07 hereof.

(d) The Lessee shall immediately pay to the Trustee, as an Additional Lease Payment, the Purchase Option Price in accordance with Section 7.01 hereof, reflecting the optional redemption of a Series of Bonds, including the Series 2010 Bonds.

(e) The Lessee shall immediately pay to the Trustee, as an Additional Lease Payment, the Mandatory Purchase Price in accordance with Section 7.02 hereof, reflecting the acceleration or any other mandatory payment of a Series of Bonds, including the Series 2010 Bonds.

(f) The Lessee shall pay to the Trustee as an Additional Lease Payment all other amounts, costs, liabilities and obligations that the Lessee assumes or agrees to pay to the Lessor or to others hereunder, under the Bond Resolution or under any other Program Document, including without limitation deficiencies in the payment of principal (including mandatory sinking fund installments) of and interest on Bonds when due as may be contemplated by Article V of the Bond Resolution, which Article shall not be amended by Lessor to add any such payment obligation without Lessee's consent.

**Section 3.09. General Obligation of Company to Make Lease Payments; Pledge of Collateral; Pledge and Security Agreement.**

(a) The Lessee hereby covenants to make all Lease Payments due under this Company Lease Agreement, during the entire Lease Term, from any and all funds or other assets available to the Lessee, including without limitation, but not limited to, such economic benefits as may be conferred upon the Company pursuant to the Program Documents.

(b) As security and further assurance for the Lessee's performance of its obligations hereunder, including the making of Lease Payments at the times, in the amounts, and otherwise in accordance with the terms and provisions of this Company Lease Agreement, the Lessee hereby grants to the Authority a collateral security interest in, among other things, any funds it may receive with respect to: (i) the sale of Solar Energy under the Power Purchase Agreement; (ii) the sale of Renewable Energy Credits under the Power Purchase Agreement; and (iii) the Construction Performance Bond (as defined in the Power Purchase Agreement).

(c) As security and further assurance for the Lessee's obligations under the Company Documents, the Lessee hereby covenants to deliver the Pledge and Security Agreement from the Pledgor defined in such agreement contemporaneously herewith, the terms of which are hereby acknowledged and accepted by the Lessee.

(d) The Lessee, as debtor, authorizes the Lessor or its assignee, to file UCC-1 financing statements with respect to the pledge of collateral contemplated by this Section 3.09.

**Section 3.10. Investment of Bond Resolution Funds; Credit for Certain Investment Earnings.** The Lessor shall cause the monies in the Funds and Accounts established under the Bond Resolution to be invested, for and on behalf of the Lessee, in accordance with the provisions of Section 5.11 of the Bond Resolution; *provided, however*, that the Lessee may direct the Lessor in writing to cause the Trustee to invest the Project Fund in any Investment Securities available under the Bond Resolution; absent any such direction from the Lessee, the Lessor may cause the investment of the Project Fund in such Investment Securities as the Lessor shall determine.

#### **ARTICLE IV LEASE OF LEASED PROPERTY; TERM OF COMPANY LEASE AGREEMENT**

##### **Section 4.01. Title; Lease of Leased Property.**

(a) The Lessor hereby agrees to (i) finance the Renewable Energy Projects and the Capital Improvement Projects for the Local Units in accordance with the terms hereof and the Bond Resolution, (ii) enter into the Power Purchase Agreement, and (ii) enter into the License Agreements. At all times during the term of this Company Lease Agreement, title to the Renewable Energy Projects, including the Leased Property, and any and all additions, repairs, replacements or modifications shall be vested solely in Lessor, and Lessee shall take all actions, and deliver any and all documents, reasonably requested by Lessor in order to vest title in such property in Lessor.

(b) The Lessee hereby agrees to (i) design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects as described on **Exhibit A-1** hereof, all in the name of, and for the benefit of, Lessor, and (ii) design, permit, acquire, construct, renovate, and install the Capital Improvement Projects as described on **Exhibit A-2** hereof, all in the name of, and for the benefit of, the Applicable Local Units.

(c) Upon the acquisition of the Leased Property, the Lessor hereby agrees to lease the Leased Property to Lessee for the duration of the Lease Term hereof, and to grant to the Lessee an option to purchase the Leased Property as set forth in Article VII hereof. The Lessee hereby agrees to take and lease the Leased Property from the Lessor on the terms and conditions set forth in this Company Lease Agreement, including, without limitation, all of the Lessee's duties and obligations under the Program Documents.

(d) Lessor and Lessee each agree to treat this Company Lease Agreement as a conditional sale agreement, and Lessee as the owner of the Leased Property, for federal income tax purposes. Lessor and Lessee each intend that Lessee shall enjoy the benefits and burdens of

ownership of the Leased Property for purposes of the Code.

**Section 4.02. Lease Term.**

(a) This Company Lease Agreement shall be effective as of the date first set forth above and shall terminate upon the occurrence of the first of the following of events (the “Lease Term”):

(i) The exercise by the Lessee of its option or its requirement to purchase the Lessor’s entire interest in the Leased Property pursuant to Article VII hereof;

(ii) The occurrence and continuation of an Event of Default hereunder by the Lessee and the Lessor’s election to exercise remedies under this Company Lease Agreement pursuant to Section 10.02 hereof;

(iii) Subject to an extension of this Company Lease Agreement in accordance with clause (iv) below, which provisions shall control even if the other requirements of this clause (iii) have been satisfied, the occurrence of both of the following: (A) the payment by the Lessee of all Lease Payments, which requirement as to Basic Lease Payments (unless sooner terminated or extended in accordance with the provisions hereof) shall be fully satisfied on \_\_\_\_\_ (unless extended by an amendment hereto resulting from the issuance of Additional Bonds), and (B) the Series 2010 Bonds, or any bonds issued to refund the Series 2010 Bonds, shall no longer be Outstanding under the Bond Resolution; or

(iv) The date of any extension to the initial term of this Company Lease Agreement, which initial term would be determined by clauses (i), (ii), and (iii) above, as such extension date shall be set forth in any amendment of this Company Lease Agreement (in accordance with the amendment provisions of Section 11.03 hereof), to the extent permitted under then applicable law.

(b) Notwithstanding the foregoing, any termination by reason of clause (a)(ii) above shall not alter or terminate the Lessee’s unconditional payment obligations hereunder, including Sections 3.02 and 3.09 hereof.

(c) Lessee shall have the right to terminate this Company Lease Agreement, by written notice to Lessor, without further obligation, and this Company Lease Agreement shall be deemed null and void, in the event that the Authority does not issue the Series 2010 Bonds on or before \_\_\_\_\_, 201\_.

**Section 4.03. Net Lease.**

(a) This Company Lease Agreement shall be deemed and construed to be a “triple net lease”. Without limitation, Lessee shall be responsible for insuring, paying any taxes due with respect to, and repairing and maintaining (including capital improvements to) the Leased Property. The obligation of the Lessee to pay Lease Payments shall be absolute and unconditional and shall in no way be released, discharged or otherwise affected for any reason, including, without limitation, (i) any defect in the condition, quality or fitness for use of, or title to, any Leased Property or (ii) any damage to or abandonment, destruction, requisition or taking of any portion of any Leased Property.

(b) The Lessee shall comply with and pay all (i) local, state and federal taxes incurred with respect to the design, permitting, acquisition, construction, renovation, installation, operation, maintenance, ownership, possession or use of any Renewable Energy Project or the design, permitting, acquisition, construction, renovation or installation of any Capital Improvement Projects, including, without limitation, income, franchise, gross receipts, sales, use, documentary stamp, excise and real and personal property taxes, (ii) payments in lieu of taxes, assessments, licenses, registration fees, freight and transportation charges and any other charges imposed or liabilities incurred with respect to the design, permitting, acquisition, construction, renovation, installation, operation, maintenance, ownership, possession or use of any Renewable Energy Project or the design, permitting, acquisition, construction, renovation or installation of any Capital Improvement Projects, (iii) Lease Payments, and (iv) penalties, fines or interest imposed on any of the foregoing during the Lease Term.

(c) The Lessee shall pay all reasonable expenses incurred by the Lessor in connection with all filings or recordings of any documents relating to this Company Lease Agreement, the other Company Documents, or the Lessor’s rights hereunder and thereunder. The Lessor shall have the right to make any of the payments required of the Lessee, but shall not be obligated to pay the same, and to charge such payment with interest at the Overdue Rate from the due date thereof through the date of payment as an Additional Lease Payment to be paid by the Lessee with the next Basic Lease Payment due under this Company Lease Agreement.

## **ARTICLE V CONSTRUCTION OF PROJECT; CARE AND USE; DRAW PROCEDURES**

### **Section 5.01. Design of Project.**

(a) Within ninety (90) days of the execution and delivery of this Company Lease Agreement, the Lessee shall cause Plans and Specifications to be prepared by one or more Architects or other Contractors with respect to all of the Projects for all of the Local Units and within the parameters set forth in the RFP. In preparing or causing the preparation of such Plans and Specifications, the Lessee expressly acknowledges that the Lessor shall only be providing financing, through the issuance of the Series 2010 Bonds, for the Maximum Bond Funded Project Cost Amount, and that any costs and expenses beyond such amount, except for any

Completion Projects agreed in writing to be financed by the Lessor or Applicable Local Unit, are to be borne solely and wholly by the Lessee.

(b) Copies of the Plans and Specifications, when in form satisfactory to the Lessee, shall be promptly delivered to the Lessor and the Applicable Local Units for the review, comment and approval of the Applicable Local Units. Within five (5) Business Days of receipt, each Applicable Local Unit shall have reviewed, and either commented on or approved the Plans and Specifications prepared by the Lessee for each respective Renewable Energy Project and each Capital Improvement Project for the Applicable Local Units. To the extent approval from any Local Unit shall not be received, the Lessee shall promptly modify the Plans and Specifications to address the Local Unit concerns, whereupon the Lessee shall resubmit the Plans and Specifications to the Lessor and the Applicable Local Unit for further review, comment and approval. Such process shall continue until the Lessor and Lessee have received the approval of all of the Local Units; provided however, that both parties and the Applicable Local Units shall endeavor to complete the review, comment and approval process within one (1) month of the original submission to the Lessor and the Local Units.

(c) Promptly after having received the Applicable Local Unit approvals of the Plans and Specifications related to their respective Projects, the Lessee shall submit or cause the submission of such Plans and Specifications to all other federal, state or local governmental or quasi-governmental agencies having jurisdiction over the Projects or any part thereof, and shall obtain any required Project permits or approvals.

#### **Section 5.02. Construction of Project.**

(a) The Lessee shall be responsible for the letting of Development Contracts with Contractors for (i) the design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects for all of the Local Units, (ii) the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects for all of the Local Units, (iii) the completion and acceptance of the Renewable Energy Projects in accordance with the Plans and Specifications therefor and the other terms hereof, including the filing of the REP Acceptance Certificates in accordance with Section 5.10(d)(i) hereof, (iv) the completion of the Capital Improvement Projects in accordance with the Plans and Specifications therefor and the other terms hereof, including the filing of the CIP Acceptance Certificates in accordance with Section 5.10(d)(ii) hereof, and (v) all other matters that are incidental to the performance of the duties and powers that are expressly granted to the Lessee herein in connection with any of the foregoing. The Lessee may carry out its functions hereunder without obtaining any further approval of the Lessor; provided, however, that the Lessee shall issue monthly reports to the Lessor and the Applicable Local Unit detailing the progress of the foregoing and the anticipated completion dates thereof.

(b) After complying with the notification provisions of this subsection (b), the Lessee shall enter into one or more Development Contracts with the Contractor(s) providing

for (i) the design, permitting, acquisition, construction, installation, operation and/or maintenance of the Renewable Energy Projects in accordance with the Plans and Specifications and, if applicable, (ii) the design, permitting, acquisition, construction, renovation, and/or installation of the Capital Improvement Projects in accordance with the Plans and Specifications. At least five (5) Business Days prior to the Lessee's entering into of each such Development Contract, the Lessee shall notify and provide each of the Lessor, the Applicable Local Unit and the Construction Manager with substantially final drafts thereof. Within five (5) Business Days thereafter, the Lessor, the Applicable Local Units and/or the Construction Manager shall notify the Lessee of any deviation therein from the Plans and Specifications for the Projects or from applicable law, if any. The Lessee shall, in its discretion, determine to incorporate or disregard any such advice into the final form of such Development Contracts; provided, however, that any such action or inaction shall not relieve the Lessee from completing the Projects in accordance with the agreed upon Plans and Specifications and in accordance with all applicable law. After such five (5) Business Day notice period, the Lessee may enter into such Development Contracts, providing only that final executed copies thereof be delivered to each of the Lessor, the Applicable Local Unit and the Construction Manager. After such execution, the Lessee shall cause each Contractor to perform its obligations under the Development Contracts, and shall deliver each completed Renewable Energy Project on a turnkey basis to the Authority and the Capital Improvement Projects to the Applicable Local Units, on or before the date specified in the Development Contracts.

(c) The Lessor and the Local Unit make no warranties or representations or accepts any liabilities or responsibilities with respect to or for the adequacy, sufficiency or suitability of, or defects in or with respect to, the design, permitting, acquisition, construction, renovation or installation of the Projects.

**Section 5.03. Performance Bonds and Other Guaranty.** Any Development Contracts authorized to be entered into by the Lessor under the terms of this Company Lease Agreement in connection with the design, permitting, acquisition, construction and installation of the Renewable Energy Projects and the design, permitting, acquisition, construction, renovation and installation of the Capital Improvement Projects shall be let in accordance with the requirements set forth in Article VII, Sections 7.3, 7.5 and 7.6 of the RFP. The Lessor shall cause each Contractor to provide a performance bond and/or a maintenance bond or bonds, a letter of credit or any other form of financial guaranty covering, with respect to the portion of the Project to which the Development Contract applies, the (a) performance of the Development Contract, including coverage for correction of defects developing within one year after completion and acceptance, and (b) payment for labor and materials, in each case issued by a responsible surety company qualified to do business in the State. Such bond or bonds shall name the Lessor, the Lessee and the Applicable Local Unit as co-obligees, and shall be in amounts equal to the fixed contract price; provided, however, that the one-year post completion and acceptance portion may be limited to ten percent (10%) of the Development Contract price.

**Section 5.04. Default in Contractors' Performance.**

(a) In the event of default of the Contractor, including any subcontractor, under any Development Contract made in connection with any Project, the Lessee shall promptly proceed, either separately or in conjunction with others, to exhaust the remedies of the Lessee against the Contractor or any subcontractor so in default and against each surety for the performance of such Contractor or subcontractor. The Lessee agrees to advise the Lessor, in writing, of the steps it intends to take in connection with any such default. The Lessor shall be entitled, in its own name or in the name of the Lessee, with notice to the Lessee, at Lessee's cost, to prosecute or defend any action or proceeding or take such other action involving the Contractor, including any subcontractor, or surety that the Lessor deems reasonably necessary, and in such event the Lessee shall cooperate fully with the Lessor. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall first be used to reimburse all costs and expenses of Lessor incurred in connection with such action, and the balance shall be paid into the Project Fund or the Revenue Fund under the Bond Resolution, as shall be determined by the Lessor.

(b) In the event that the Lessee is unable to comply with its requirements under this Company Lease Agreement prior to the execution of any Acceptance Certificate or if for any reason the design, permitting, acquisition, construction, renovation and installation of any Project is delayed, there shall be no resulting liability on the part of the Lessor and there shall be no diminution in or postponement of the amounts that are due and payable by the Lessee to the Lessor under the terms of this Company Lease Agreement.

**Section 5.05. Additional Rights of Lessee.** Subject to the terms of other Program Documents, Lessee may, at its own expense, have the right to make immaterial changes to any Renewable Energy Project or to make such additions, modifications and improvements thereto as in the Lessee's judgment are necessary to enable it to perform its obligations under this Company Lease Agreement without materially impairing such Project or materially changing the design of such Project from the Plans and Specifications; provided, however, that none of the foregoing shall in any way damage such Project or cause such Project to be used for purposes other than those authorized under the provisions of the Program Documents and all applicable law.

**Section 5.06. Maintenance and Use of Project; Lessor Access; Repairs Not to Create Liens.**

(a) With respect to the Renewable Energy Projects financed under this Company Lease Agreement, the Lessee shall, at its own and sole expense, maintain, preserve and keep such Projects in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep such Projects in such condition. The requirements to repair and keep the Capital Improvement Projects in good working order shall remain with the Applicable Local Units.

(b) The Lessee agrees that the Lessor and the Applicable Local Units shall have the right (but not the obligation) to enter upon the premises at all times upon twenty-four hours notice (except in the case of an emergency, in which event no prior notice shall be required) where the Renewable Energy Projects are located in order to inspect the same for the purpose of assuring that such Renewable Energy Projects are being properly maintained, preserved and kept in good repair and condition. The Lessee further agrees that the Lessor or the Applicable Local Unit shall have such rights of access to such Renewable Energy Projects as may be reasonably necessary to cause the proper maintenance, preservation and keeping in good repair of such Renewable Energy Projects in the event of a failure by the Lessee to perform its obligations hereunder, which rights of access shall in no way imply any obligation on the part of the Lessor or the Applicable Local Units.

(c) The Lessee shall not permit any mechanic's or materialmen's or other lien to be established or remain against any portion of the Projects for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the Lessee pursuant to Section 5.05 hereof and this Section 5.06, other than Permitted Encumbrances; provided, however, that if any such lien is established and the Lessee notifies the Lessor of its intention so to do, the Lessee may, in good faith, contest any lien filed or established against the Projects and, in such event, permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee that, in the opinion of independent counsel, by nonpayment of any such item, the interest of the Lessor or the Applicable Local Unit in such Project shall be materially endangered or such Project or any part thereof shall be subject to loss or forfeiture, in which event the Lessee shall promptly pay and cause to be satisfied and discharged all such unpaid items or provide the Lessor and the Applicable Local Unit with full security against any such loss or forfeiture. The Lessor shall cooperate, and shall use its reasonable efforts to cause the Applicable Local Unit to cooperate fully with the Lessee in any such contest upon such request at the sole cost and expense of the Lessee.

**Section 5.07. Possession and Enjoyment of Projects during Lease Term.** From and after the execution and delivery of the REP Acceptance Certificate with respect to the applicable Renewable Energy Projects, the Lessor hereby agrees that during the Lease Term the Lessee, so long as the Lessee is not in default hereunder, shall have the quiet use and enjoyment of the Leased Property, and the Lessee shall during such Lease Term peaceably and quietly have, hold and enjoy the Leased Property, without suit, trouble or hindrance from the Lessor or any party claiming under or through the Lessor, except as expressly set forth in the Program Documents.

**Section 5.08. Lessee's Negligence.** The Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Projects, or any portion thereof, and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of the Lessee or of Contractors or other third parties, and whether such property damage be to the Lessee's property or to the property of others, which injury, death or damage is proximately caused by the negligent conduct of the Lessee or its

officers, employees and agents, including any Contractors. The Lessee hereby assumes responsibility for and agrees to reimburse the Lessor and the Applicable Local Unit for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees), of whatsoever kind and nature, imposed on, incurred by or asserted against the Lessor or the Applicable Local Unit that in any way relate to or arise out of a claim, suit or proceeding based in whole or in part upon the negligent conduct of the Lessee or its officers, employees and agents.

#### **Section 5.09. Project Costs; Payment.**

(a) The Project Costs to be incurred by the Lessee, or on behalf of the Lessee by any Contractor, relating to the acquisition, construction, and installation of the Renewable Energy Projects and the acquisition, construction, renovation and installation of the Capital Improvement Projects for all Local Units have been estimated by the Lessee under the Company Proposal to be an aggregate amount not to exceed the Total Project Cost amount. Accordingly, the Lessor shall cause the Series 2010 Bonds to be issued, and further, shall cause the Maximum Bond Funded Project Cost Amount to be deposited in the Project Fund upon issuance of the Series 2010 Bonds pursuant to Section 2.03(7)(d)(i) and (ii) of the Bond Resolution. The Lessee shall deposit with the Trustee, at the times and in the amounts specified by the Lessor, the difference between the Total Project Costs and the Maximum Bond Funded Project Cost Amount. The Lessee represents that such initial deposit of the Maximum Bond Funded Project Cost Amount, together with the Lessee's deposit, shall be sufficient to pay all of the Costs to design, permit, acquire, construct, and install all of the Renewable Energy Projects and to design, permit, acquire, construct, renovate, and install all of the Capital Improvement Projects, in either case for all of the Local Units on, in or about their Local Unit Facilities and in accordance with the Plans and Specifications.

(b) It is expressly acknowledged by the Lessee and the Lessor that the Lessor shall be under no obligation to issue any Bonds in an amount in excess of the Maximum Bond Funded Project Cost Amount to fund any Project Cost, including the Costs of any Completion Project related to either the Renewable Energy Projects or the Capital Improvement Projects of the Local Units on, in or about their Local Unit Facilities.

(c) All Project Costs in excess of the Maximum Bond Funded Project Cost Amount as set forth in subsection (a) above shall be paid the Lessee. The Lessee hereby covenants to complete all of the Projects in accordance with the Plans and Specifications regardless of the actual Costs of such Projects and regardless of the amounts remaining on deposit in the Project Fund to pay such Project Costs. To the extent the Lessee shall complete all of the Projects in accordance with the Plans and Specifications and there are amounts remaining on deposit in the Project Fund, after the final Acceptance Certificate shall have been filed by the Lessee in accordance with the terms hereof, such remaining amounts shall be applied as set forth in the Bond Resolution, or as otherwise directed by Lessor for the benefit of Lessee.

(d) The Lessee shall cause moneys on hand from time to time in the Project Fund, held by the Trustee, to be made available for payment of all Project Costs, in the manner provided herein for submission of Draw Papers, including Sections 5.10 hereof, and in the Bond Resolution, including Sections 5.02(1) and 5.02(2)(a) thereof. The Lessee may cause moneys on hand from time to time in the Project Fund held by the Trustee to be made available for payment of all Company Development Fees and Expenses up to an aggregate amount of [\$TBD], unless the Lessee receives the written acknowledgment of a higher ceiling from the Lessor, through the submission of a Certificate of an Authorized Officer of the Lessee substantially in the form of **Exhibit D** hereto, and otherwise following the terms set forth in Section 5.02(2)(b) of the Bond Resolution. Any moneys remaining on deposit in the Project Fund, including interest earnings, upon the payment of all Project Costs (for which the Company shall submit Draw Papers) shall be applied in the manner set forth in Section 5.10(e) hereof.

#### **Section 5.10. Submission of Draws; Procedures; Acceptance Certificates.**

(a) As payments are required for the Project under this Company Lease Agreement, the Lessee shall prepare and assemble the Draw Papers (as defined below) and submit them to the Trustee.

(b) On or before 10:00 a.m. on each date on which the Lessee intends to submit Draw Papers requisitioning funds held by the Trustee in the Project Fund for Costs of the Renewable Energy Projects or Capital Improvement Projects at a Local Unit Facility (each a “**Draw Date**”), the Lessee shall advise the Trustee in writing of the aggregate amount of funds needed for disbursement to pay such Project Costs. An amount equal to the lesser of (i) such aggregate amount of funds needed and (ii) the amount of funds available in the Project Fund (and not otherwise earmarked to pay the Costs of the Projects for the other Local Units) shall be applied to the payment of such Project Costs upon submission of the Draw Papers in accordance with subsection (c) below.

(c) The Lessee shall cause the Trustee to make payments from the Project Fund to the Contractors under the Development Contracts or other third-party vendors, in either case for Costs of the Projects, but only after the Lessee shall have supplied the Trustee with a duly authorized, completed and executed requisition from the Lessee substantially in the form of **Exhibit C** hereto (together with any attachments thereto or required thereby, the “**Draw Papers**”), each executed by the Lessee, acknowledged by the Applicable Local Unit, and acknowledged as to form only by the Lessor, stating with respect to each such payment to be made: (i) the requisition number, (ii) the name and address of the Contractor, other person, other corporation or other entity to which payment is due or, if for reimbursement to the Lessee, to which Contractor, other person, other corporation or other entity and when payment has previously been made by the Lessee, and as applicable in either case, the Development Contract under which such payment is or was due, (iii) the amount to be paid, which amount shall be net of a ten percent (10%) retainage amount, (iv) the Renewable Energy Project or Capital Improvement Project to which such payment is to be applied, including the Applicable Local

Unit and their Local Unit Facility, (v) that such payment obligation has been properly incurred in accordance with the Plans and Specifications, is an item of the Cost of such Project, is a proper charge against the Project Fund, and has not been the basis of any previous withdrawal, and (vi) that attached thereto is a bill, invoice, receipt or other evidence that payment on such Project Cost is due and owing or has been paid by or on behalf of the Lessee. Lessee also agrees to file a monthly Initial Project Workforce Form AA201, substantially in the form of, and consistent with the instructions included in, **Exhibit C-1** attached hereto, with the Lessor and the Division of Public Contracts Equal Opportunity Compliance, through and including the month after the final Acceptance Certificate has been filed.

(d) From time to time, in accordance with the terms of this Company Lease Agreement, the Power Purchase Agreement, the License Agreements and the Bond Resolution, the Lessee shall file with the Trustee, duly authorized, completed, executed, acknowledged, and delivered Acceptance Certificates in the form of **Exhibit B** hereto at the following times and with respect to the following matters, and upon receipt thereof, the Trustee shall take the following actions:

(i) The Lessee shall file with the Trustee the REP Acceptance Certificates in the form of **Exhibit B-1** hereto, one for each Local Unit, signed by an Authorized Officer of the Lessee with respect to the Renewable Energy Projects or, where applicable, any Completion Project related thereto, for each such Local Units, when (A) the Lessee has submitted all Draw Papers respecting Costs of such Renewable Energy Projects or the Completion Project related thereto, if any, to be paid from the Project Fund that are eligible to be approved with respect thereto for each such Local Unit, (B) all such Renewable Energy Projects or Completion Project related thereto, as the case may be, for each such Local Unit have been designed, acquired, constructed and installed in accordance with the Plans and Specifications therefor, (C) all such Renewable Energy Projects or Completion Project related thereto, as the case may be, for each such Local Unit have been accepted by the Lessee and such Local Unit, and (D) a statement regarding the funds remaining on deposit in the Project Fund earmarked for any such Renewable Energy Projects, if any, all in accordance with Section 5.02 of the Bond Resolution. Each such REP Acceptance Certificate shall not be filed by the Lessee with the Trustee until so acknowledged by the Applicable Local Unit, until each such Certificate shall be further acknowledged by an Authorized Officer of the Lessor as to form only and until accompanied by one or more Interconnection Agreements, if required, with respect to all such Renewable Energy Projects or Completion Projects related thereto;

(ii) The Lessee shall file with the Trustee the CIP Acceptance Certificates in the form of **Exhibit B-2** hereto, one for each Local Unit that is financing Capital Improvement Projects with a portion of the proceeds of the Bonds, signed by an Authorized Officer of the Lessee with respect to such Capital Improvement Projects or, where applicable, any Completion Project related thereto, for each such Local Units,

when (A) the Lessee has submitted all Draw Papers respecting Costs of such Capital Improvement Projects or the Completion Project related thereto, if any, to be paid from the Project Fund that are eligible to be approved with respect thereto for each such Local Unit, (B) all such Capital Improvement Projects or Completion Project related thereto, as the case may be, for each such Local Unit have been designed, acquired, constructed, renovated and installed in accordance with the Plans and Specifications therefor, (C) all such Capital Improvement Projects or Completion Project related thereto, as the case may be, for each such Local Unit have been accepted by such Local Unit. Each such CIP Acceptance Certificate shall not be filed by the Lessee with the Trustee until so acknowledged by the Applicable Local Unit, and until each such Certificate shall be further acknowledged by an Authorized Officer of the Lessor as to form only, and (D) a statement regarding the funds remaining on deposit in the Project Fund earmarked for any such Capital Improvement Projects, if any, all in accordance with Section 5.02 of the Bond Resolution. Each such CIP Acceptance Certificate shall not be filed by the Lessee with the Trustee until so acknowledged by the Applicable Local Unit, and until each such Certificate shall be further acknowledged by an Authorized Officer of the Lessor as to form only; and

(iii) Upon the Trustee's receipt of the fully authorized, completed, executed, acknowledged and delivered CIP Acceptance Certificate and REP Acceptance Certificate with respect to all of the Renewable Energy Projects and Capital Improvement Projects for a particular Local Unit, the Lessor shall cause, pursuant to Section 5.02(3)(a)(iii) of the Bond Resolution, the Trustee to release and pay over to the Lessee one half (1/2) of the ten percent (10%) retainage previously withheld by the Trustee from all of the Draw Papers previously submitted by the Lessee with respect to such Renewable Energy Projects and Capital Improvement Projects for such Local Unit.

(e) If, upon the completion of all of the Projects for the Local Units on or prior to the Completion Date, as evidenced by the filing and acceptance of all Acceptance Certificates by the Company, all in accordance with the terms hereof, of the Bond Resolution, the Power Purchase Agreement and the License Agreements, then upon the Trustee's receipt of the final Acceptance Certificate so designated, the Trustee shall, without any further authorization, (i) release and pay over to the Lessee the other half (1/2) of the ten percent (10%) retainage previously withheld by the Trustee from all of the Draw Papers previously submitted by the Lessee with respect to all of the Renewable Energy Projects and Capital Improvement Projects for all of the Local Units, and (ii) transfer any surplus funds remaining on deposit in the Project Fund for application as provided by the Bond Resolution or at the direction of the Lessor. If the final Acceptance Certificate for all of the Local Units shall not have been filed and accepted by the Lessee, all in accordance with the terms hereof, of the Bond Resolution, and of the License Agreements, on or prior to the Completion Date (thereby causing an Event of Default hereunder, but not under the Bond Resolution), the Trustee shall transfer any funds remaining on deposit in the Project Fund as set forth in a Certificate of an Authorized Officer of the Authority, as required pursuant to the provisions of Section 5.02 of the Bond Resolution.

**Section 5.11. Reserved.**

**Section 5.12. Construction Period Insurance.** Each Contractor shall be required to provide and maintain in force during the entire acquisition, construction, renovation or installation period of all Projects, and prior to the Contractor's performance of work under any Development Contract, builder's risk or property damage insurance (in an amount not less than the full value of all work done and materials and equipment provided or delivered by the Contractor and, in any event, not less than the applicable Purchase Option Price at such time), comprehensive liability insurance, worker's compensation insurance and any other insurance required by law or customarily maintained with respect to like projects. All such policies of insurance shall show the Lessor, the Lessee and the Applicable Local Unit as named insureds, in such amounts as their interests may appear. Evidence of such insurance shall be filed with the Lessor.

**Section 5.13. Taxes and Other Governmental Charges and Utility Charges.**

The Lessee shall pay when due all gas, water, steam, electricity, heat, power, telephone and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Renewable Energy Projects. The Lessee shall also pay all property and excise taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Renewable Energy Projects or any part thereof or the Lease Payments, which become due during the Term of this Company Lease Agreement with respect thereto, and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Renewable Energy Projects; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Lessee shall be obligated to pay only such installments as are required to be paid during the Term of this Company Lease Agreement as and when the same become due. The Lessee shall not be required to pay any federal, state or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by the Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any real estate or other tax upon property and arises out of or is levied upon the Lessor's interest in the Renewable Energy Projects hereunder.

The Lessee may, at its own expense and in its or the Lessor's name, contest in good faith any such taxes, assessments or utility or other charges (and the Lessor shall cooperate fully in any such contest) and, in the event of any such contest, permit such taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Lessor in the Renewable Energy Projects shall be materially endangered, or the Renewable Energy Projects or any part thereof shall be subject to loss or forfeiture, in which event the Lessee shall promptly pay such taxes,

assessments or charges or provide the Lessor with full security against any loss or forfeiture that may result from nonpayment.

**Section 5.14. Site Visits.** The Lessor shall visit the site of the Project at least quarterly to monitor the acquisition, construction, renovation and installation of the Projects by the Lessee and/or the Contractors, as the case may be.

**Section 5.15. Construction Manager.** At its sole discretion, the Lessor may employ one or more Construction Managers, payable from the proceeds of the Series 2010 Bonds delivered to Lessor from a portion of its Project Development Costs, to act on behalf of the Lessor in exercising any of its rights, or in discharging any of its duties and obligations under this Company Lease Agreement or other Program Document with respect to the (a) design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects for the Local Units and/or the (b) design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects for the Local Units.

## **ARTICLE VI INSURANCE; TITLE TO PROJECT AND OTHER MATTERS**

**Section 6.01. Insurance Coverage for the Projects.** The Lessee shall procure and maintain or cause to be procured and maintained, throughout the Term of this Company Lease Agreement and in accordance with the further terms of this Article VI, (i) public liability insurance, including, without limitation, bodily injury and property damage coverage, (ii) auto liability insurance, including, without limitation, bodily injury and property damage coverage, (iii) worker's compensation insurance, and (iv) property insurance, including, without limitation, fire and comprehensive other risk coverage, all to be procured and maintained with an insurance company approved by the State and such insurance policy or policies naming the Lessee, the Lessor and the Applicable Local Units as insureds or, if the Lessee elects and receives the consent of the Lessor, the Lessee shall provide to the Lessor a Certificate of an Authorized Officer of the Lessee to the effect that adequate reserves are deposited and maintained in trust with an independent trustee in the amounts sufficient to cover the loss or damage to any Project. Any insurance proceeds in excess of the Purchase Option Price for all of the Bonds Outstanding at such time with respect to the Projects under this Company Lease Agreement shall be remitted to the Lessee.

**Section 6.02. Public Liability Insurance.** The Lessee shall procure and maintain or cause to be procured and maintained, throughout the Term of this Company Lease Agreement, a standard comprehensive general liability insurance policy or policies in protection of the Lessee, the Lessor and the Applicable Local Units. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by the operation or ownership of the Projects. Said policy or policies shall provide coverage in the amount of not less than \$1,000,000.00. This coverage must be in writing on an occurrence form, claims made policies

will be unacceptable. This Comprehensive General Liability insurance shall cover the Lessee, the Lessor, the Local Units and their employees, agents and officers from and against any claim arising out of personal injury or property damage. This coverage shall include blanket contractual insurance and such coverage shall make express reference to the indemnification provisions set forth in this Company Lease Agreement. The policy shall also be endorsed to include coverage for products, completed operations, and independent contractors. Such public liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Lessee, and may be maintained in whole or in part in the form of self-insurance by the Lessee; provided, however, that such self-insurance complies with the provisions of Section 6.14 hereof. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds of such insurance shall have been paid.

**Section 6.03. Auto Liability Insurance.** The Lessee shall procure and maintain or cause to be procured and maintained, throughout the Term of this Company Lease Agreement, a standard comprehensive automobile liability insurance policy or policies in protection of the Lessee, the Lessor and the Applicable Local Units. Said policy or policies shall be written in a comprehensive form, shall comply with N.J.S.A. 39:6b-1 et seq. and all local regulations and case law regarding the scope and effect of the New Jersey Compulsory Motor Vehicle Insurance Statute, and shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage arising from the maintenance, use or operation of any owned or non-owned vehicle used in or in connection with the Projects. Said policy or policies shall provide coverage in an amount not less than \$1,000,000.00, shall be maintained. Such coverage will include all owned, non-owned, leased and/or hired motor vehicles, which may be used by Lessee in connection with the services, required under the PPA. such auto liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried or required to be carried by the Lessee, and may be maintained in whole or in part in the form of self-insurance by the Lessee; provided, however, that such self-insurance complies with the provisions of Section 6.14 hereof. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the Net Proceeds of such insurance shall have been paid.

**Section 6.04. [Reserved].**

**Section 6.05. Worker's Compensation Insurance.** If required by State law, the Lessee shall procure and maintain or cause to be procured and maintained, throughout the Term of this Company Lease Agreement, worker's compensation insurance covering all employees on, in, near or about the Projects, and, upon request, shall furnish to the Lessor certificates evidencing such coverage. To the extent the Lessee is procuring or maintaining such insurance, such coverage may, at the option of the Lessee, be provided through a self-insurance program that is established and operating in conformity with all applicable State law. To the extent that any other entity is procuring or maintaining such insurance, such insurance shall be provided under a

policy written by an insurance company approved by the State in a minimum amount of \$1,000,000 for damage resulting from a single accident or event.

**Section 6.06. Excess Liability.** The Lessee shall procure and maintain or cause to be procured and maintained, throughout the Term of this Company Lease Agreement, an excess liability insurance policy or policies in protection of the Lessee, the Lessor and the Applicable Local Units. Said policy or policies shall be in the amount of not less than \$1,000,000.00 shall be in the form of an Umbrella policy rather than a following form excess policy. This policy or policies shall be specifically endorsed to be in excess of the required Comprehensive General Liability Coverage, the Employers' Liability Coverage on the Workers' Compensation policy, and the Comprehensive Automobile Liability policy.

**Section 6.07. Other Insurance and Requirements for All Insurance.** All insurance required by Article V hereof or this Article VI, (a) may be carried under a separate policy or a rider or endorsement, (b) shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, or may be maintained as part of any insurance pool permitted under the laws of the State, (c) shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the Lessor and the Applicable Local Units at least thirty (30) days before the cancellation or revision becomes effective, and (d) shall name the Lessee, the Lessor and the Applicable Local Units as insured parties as their respective interests may appear. The Lessee shall deposit with the Lessor original policies evidencing any such insurance procured by it or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy, the party obligated under the terms of this Company Lease Agreement to maintain such insurance shall furnish to the other party and to the Applicable Local Units evidence that the policy has been renewed or replaced by another policy conforming to the provisions of Article V hereof and this Article VI, unless such insurance is no longer obtainable in which event such party shall notify the other party and the Applicable Local Units of this fact and the Lessee shall thereafter self-insure pursuant to the terms of this Article VI. Neither the Trustee nor any Applicable Local Unit shall have responsibility with respect to any determinations as to the sufficiency of any insurance required under this Company Lease Agreement nor as to the compliance by the Lessee with the provisions of the Bond Resolution regarding insurance.

**Section 6.08. Indemnification.** The Lessee shall (a) indemnify and save harmless the Lessor and the Local Units and their agents, employees, officers and directors from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees) that the Lessor or the Local Units may incur or be subject to as a consequence, directly or indirectly, of any breach or non-performance by the Lessee of its obligations under this Company Lease Agreement, or negligence or misconduct by the Lessee in connection with such performance or non-performance, or the ownership, rental, possession, operation, condition, sale or return of the Projects, and (b) reimburse the Lessor or the Local Units for all losses, costs, charges and expenses (including, but not limited to,

reasonable attorneys' fees) that the Lessor or the Local Units may incur or be subject to as a consequence, directly or indirectly, of involvement in any legal proceeding or action relating to the foregoing; provided, however, that no indemnification or reimbursement shall be due to the extent that the Lessor or the Local Units, as applicable, has acted with gross negligence or willful misconduct in connection with the liabilities for which the Lessor or the Local Units, as applicable, is seeking indemnification or reimbursement. All amounts that become due from the Lessee under this Section 6.08 shall be credited with any amounts received by the Trustee from insurance provided by the Lessee, shall be payable by the Lessee within thirty (30) days following demand therefore by the Lessor or the Local Units, as applicable, and shall survive the termination or expiration of this Company Lease Agreement.

**Section 6.09. Title to Projects Upon Termination of Company Lease Agreement.**

(a) Upon the financing of the Renewable Energy Projects with a portion of the proceeds of the Bonds and the filing of the REP Acceptance Certificates, the Lessor shall be the fee owner of such Renewable Energy Projects for all State law purposes, subject to the lease of the Leased Property contemplated hereby. Upon the filing of the CIP Acceptance Certificates, the parties hereto acknowledge that the Applicable Local Units shall be the fee owners of the respective Capital Improvement Projects described in any such Certificates. Except as expressly set forth herein, so long as no Event of Default shall have occurred and be continuing hereunder, the Lessor shall not sell, assign or alienate all or any part of the Leased Property or any interest therein to any other person, it being the purpose and intent hereof that the Lessee shall have the option to purchase all of the Lessor's right, title and interest in and to the Leased Property during or upon the termination of this Company Lease Agreement in accordance with Article VII hereof. Notwithstanding the foregoing, Lessor shall be permitted to assign this Company Lease Agreement, the Power Purchase Agreement, the Site License, and any other Program Documents, to the Trustee to secure the performance by Lessee of its obligations hereunder.

(b) Upon the termination of this Company Lease Agreement in accordance with Section 4.02(a)(iii) hereof, (i) Lessee shall have the option, to be exercised by written notice to Lessor and the Local Units, to purchase for one dollar (\$1.00) all of the Lessor's right, title and interest in and to the Leased Property (and not the Capital Improvement Projects, the Lessor having no interest therein), and if exercised, such Leased Property shall be sold by the Lessor to the Lessee, (ii) except for the rights of the Local Units to effect a fair market value purchase of their respective Leased Property in accordance with subsection (d) below or any other Program Document, to the extent all Lease Payments have been made by the Lessee in full, all other covenants, agreements and obligations of the parties hereto under this Company Lease Agreement shall cease, terminate, and be deemed discharged and satisfied, and (iii) the Lessor and its officers shall take all actions necessary to authorize, execute and deliver to the Lessee any and all documents necessary to vest in the Lessee all of the Lessor's right, title and interest in and to the Leased Property, free and clear of all liens, leasehold interests and encumbrances, including, if necessary, a release of any and all liens or interests created under the provisions of this Company Lease Agreement. In such event, the Trustee shall cause a statement of debits and

credits for such period or periods as shall be requested by the Lessor or the Lessee to be prepared and filed with the Lessor and the Lessee, and, upon the request of the Lessor or the Lessee, shall execute and deliver to the Lessor and the Lessee all such instruments as may be desirable to evidence such discharge and satisfaction.

(c) Upon the termination of this Company Lease Agreement due to an optional or mandatory pre-purchase of the Leased Property in accordance with Section 4.02(a)(i) and Sections 7.01 or 7.02, as applicable, hereof, (i) the rights of the Lessor and the Lessee in the title to the Leased Property shall be as set forth in Section 7.03 hereof, (ii) except for the rights of the Local Units to effect a fair market value purchase of the Leased Property at their respective Renewable Energy Projects in accordance with subsection (d) below or any Program Document, to the extent all Lease Payments have been made by the Lessee in full, all other covenants, agreements and obligations of the parties hereto under this Company Lease Agreement shall cease, terminate, and be deemed discharged and satisfied, and (iii) the Lessor and its officers shall take all actions necessary to authorize, execute and deliver to the Lessee any and all documents necessary to vest in the Lessee all of the Lessor's right, title and interest in and to the Leased Property, free and clear of all liens, leasehold interests and encumbrances, including, if necessary, a release of any and all liens or interests created under the provisions of this Company Lease Agreement. In such event, the Trustee shall cause a statement of debits and credits for such period or periods as shall be requested by the Lessor or the Lessee to be prepared and filed with the Lessor and the Lessee, and, upon the request of the Lessor or the Lessee, shall execute and deliver to the Lessor and the Lessee all such instruments as may be desirable to evidence such discharge and satisfaction.

(d) The parties acknowledge that, pursuant to Sections 2.4 and 2.5 of the Power Purchase Agreement, each Local Unit shall have a purchase option for the Leased Property at such Local Unit's Local Unit Facilities and to the extent any Applicable Local Unit exercises such option, the parties acknowledge that the right, title and interest in and to such Leased Property shall be delivered to such Local Unit, all in accordance with the provisions of the Power Purchase Agreement and License Agreement for such Local Unit.

(e) Upon the termination of this Company Lease Agreement due to a Lessee Event of Default in accordance with Section 4.02(a)(ii) hereof, (i) Lessor shall possess and retain full right, title and interest in and to the Leased Property for all of the Local Units, (ii) Lessee shall have no further leasehold or other right, title and interest in and to such Leased Property or Renewable Energy Projects, (iii) except for the rights of the Local Units to purchase their respective Renewable Energy Projects (including the Leased Property) in accordance with subsection (f) below, to the extent all Lease Payments have been made by the Lessee in full, all other covenants, agreements and obligations of the parties hereto under this Company Lease Agreement shall cease, terminate, and be deemed discharged and satisfied, and (iii) the Lessee and its officers shall take all actions necessary to authorize, execute and deliver to the Lessor any and all documents necessary to vest in the Lessor all of the Lessee's right, title and interest in and to the Leased Property, free and clear of all liens, leasehold interests and encumbrances,

including, if necessary, a release of any and all liens or interests created under the provisions of this Company Lease Agreement. In such event, the Trustee shall cause a statement of debits and credits for such period or periods as shall be requested by the Lessee or the Lessor to be prepared and filed with the Lessee and the Lessor, and, upon the request of the Lessee or the Lessor, shall execute and deliver to the Lessee and the Lessor all such instruments as may be desirable to evidence such discharge and satisfaction.

(f) Upon the termination of this Company Lease Agreement as contemplated in Section 6.09(e) above, the parties acknowledge that the right, title and interest in and to the Renewable Energy Project (including the Leased Property) developed for any one or more Local Units may be sold by the Lessor to any such Applicable Local Unit for one dollar (\$1.00).

**Section 6.10. No Further Encumbrances; Exceptions.**

(a) The Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Projects, including the Leased Property, other than the respective rights of the Lessor and the Lessee as herein provided and the Permitted Encumbrances or in any other Program Document. Except as expressly provided in this Article VI, the Lessee shall promptly, at its own expense, take such action as may be necessary to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Lessee shall reimburse the Lessor and/or the Applicable Local Units, as applicable, for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

(b) The Lessee may, at its own expense and in its name, contest in good faith any taxes, assessments or utility and other charges and, in the event of any such contest, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Lessor shall notify the Lessee that, in the opinion of independent counsel, by nonpayment of any such items the interest of the Lessor in the Projects shall be materially affected or the Projects or any part thereof shall be subject to loss or forfeiture, in which event the Lessee shall promptly pay such taxes, assessments or charges or provide the Lessor with full security against any loss that may result from nonpayment, in form satisfactory to the Lessor.

**Section 6.11. Trustee Indemnification.** The Lessee shall (a) indemnify and save harmless the Trustee and its agents, employees, officers and directors from and against any and all liabilities, including, without limitation, all claims, demands, damages, losses, costs, penalties, charges and expenses (including, but not limited to, reasonable attorneys' fees) in any way relating to or arising from (i) the development, ownership, possession, operation, condition, sale, rental, sub-rental or return of the Projects, (ii) the Program Documents, and (iii) any resignation by the Trustee in accordance with Section 10.07(2) of the Bond Resolution; and (b) reimburse the Trustee for all losses, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees) that the Trustee may incur or be subject to as a consequence, directly

or indirectly, of involvement in any legal proceeding or action relating to the foregoing; provided, however, that no indemnification or reimbursement shall be due to the extent that the Trustee has acted with negligence or willful misconduct in connection with the liabilities for which the Trustee is seeking indemnification or reimbursement. All amounts that become due from the Lessee under this Section 6.11 shall be credited with any amounts received by the Trustee from insurance provided by the Lessee, shall be payable by the Lessee within thirty (30) days following demand therefor by the Trustee, and shall survive the termination or expiration of this Company Lease Agreement.

**Section 6.12. Advances.** If the Lessee shall fail to perform any of its obligations under this Company Lease Agreement, the Lessor or the Applicable Local Units may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the Lessee shall be obligated to repay all such advances on demand to the Lessor or the Applicable Local Units, as the case may be, as Additional Lease Payments with interest at the Overdue Rate from the date of the advance to the date of repayment.

**Section 6.13. Net Proceeds of Insurance; Form of Policies.**

(a) Each policy of insurance obtained pursuant to or required by this Article VI shall provide that all Net Proceeds thereunder shall be payable (i) with respect to the Renewable Energy Projects, to the Lessor for deposit with the Trustee in the Project Fund, the Revenue Fund or such other Fund or Account under the Bond Resolution, in any event as directed by the Lessee, but only so long as the Lessee has not caused an Event of Default hereunder, in which latter case such Net Proceeds shall be payable to the Lessor, (ii) with respect to the Capital Improvement Projects, to the Applicable Local Unit, or at their direction, to the Trustee for deposit in the Project Fund, or other Fund or Account under the Bond Resolution, or (iii) if not discernable as to Project or otherwise, payable to the Lessor or at the Lessor's direction, to the Trustee for deposit in the Project Fund, the Revenue Fund, or other Fund or Account under the Bond Resolution.

(b) The Lessee shall pay or cause to be paid when due the premiums for all insurance policies required by this Company Lease Agreement, and shall promptly furnish or cause to be furnished to the Lessor and the Local Units evidence of such payments. All such policies shall provide that the Applicable Local Units and the Lessor shall be given not less than thirty (30) days' notice of each expiration, any intended cancellation and any intended reduction of the coverage provided thereby.

(c) Neither the Applicable Local Units nor the Authority shall be responsible for the sufficiency of any insurance herein required, and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Applicable Local Units or the Authority, as the case may be.

(d) The Lessee shall cause to be delivered to the Applicable Local Units and

the Lessor on each anniversary of the date of issuance of the Series 2010 Bonds a Certificate of an Authorized Officer of the Lessee, satisfactory to the Applicable Local Units and the Lessor, that the insurance policies required by this Company Lease Agreement are in full force and effect.

**Section 6.14. Self-Insurance.** Self-insurance, in lieu of policy coverage, maintained by the Lessee pursuant to this Article VI shall only be deemed to comply with this Article VI to the extent all of the following are satisfied:

(a) The self-insurance program shall be acceptable to the Lessor, the Applicable Local Units and the Lessee, as evidenced by Certificates of Authorized Officers to such effect;

(b) The self-insurance program shall be approved by an Independent Insurance Consultant;

(c) The self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid; the adequacy of each such fund shall be evaluated on an annual basis by an Independent Insurance Consultant; and any deficiencies in any self-insurance claims reserve fund shall be remedied in accordance with the recommendation of an Independent Insurance Consultant;

(d) The self-insurance claims fund shall be held in a separate trust fund by an independent trustee, which independent trustee may also be the Trustee serving as such under the Bond Resolution;

(e) The self-insurance program shall comply in every particular with all applicable law; and

(f) In the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by an Independent Insurance Consultant, shall be maintained.

## **ARTICLE VII OPTION TO PURCHASE; PREPAYMENT OF LEASE PAYMENTS**

### **Section 7.01. Lessee's Prepayment and Purchase Option; Purchase Option Price.**

(a) The Lessee is hereby granted the option to prepay its Basic Lease Payments in part, in accordance with Section 8.07 of the Bond Resolution. Any partial prepayment shall not affect the Lessor's right, title and interest in and to the Leased Property or the Renewable Energy Projects. At the Lessor's option, as directed in a Certificate of an

Authorized Officer of the Lessor delivered by the Lessor to the Trustee, the Company and the County accompanying any such partial prepayment, any such partial prepayment shall be either (i) credited to the next due Interest Portion of Basic Lease Payments due from the Lessee, and if not fully applied, to the Principal Portion of Basic Lease Payments until fully applied or (ii) applied to defease Outstanding Bonds in the manner contemplated by Article XII of the Bond Resolution, and in the amounts and on the dates as set forth in any such partial prepayment Certificate of the Lessor, which in the case of such defeasance option selected by the Lessor, such Certificate of the Lessor shall be acknowledged by an Authorized Officer of the Lessee to the effect that such dates and amounts conform to the requirements of the Bond Resolution. Upon any such partial prepayment, new schedules reflecting the revised Basic Lease Payments due from the Lessee, taking into account any such partial prepayment, shall be attached by the Lessor hereto.

The Lessee may not utilize funds in the County Security Fund, if any, toward any such partial prepayment; provided, however, that such limitation does not extend to monies previously released from the County Security Fund and transferred to the Aged Account in the Revenue Fund in accordance with Section 5.07(3)(a) of the Bond Resolution at the time of any such partial prepayment; provided, further, however, that such limitation does not extend to such amounts that would be eligible for release pursuant to the calculations referred to in Section 5.07(3)(a) of the Bond Resolution immediately after any such partial prepayment (to the extent the Series 2010 Bonds will not be redeemed simultaneously with the prepayment, the Series 2010 Bonds that will be defeased upon the prepayment shall not be considered Outstanding for purposes of such calculations, and therefore can be released and applied to any such prepayment if the calculations so warrant release), to the extent the Lessor has verified such calculations in writing to the Lessee and the Trustee. In any such instance where this limitation does not so extend, the Lessee may direct the Trustee in writing, with a copy to the Lessor, to apply any such amounts in the County Security Fund to any such partial prepayment, and the Lessor shall cause the Trustee, pursuant to the terms set forth in the Bond Resolution, to promptly comply with any such direction.

(b) The Lessee is further hereby granted the option to prepay and purchase all of the Lessor's right, title and interest in and to the Leased Property in whole, at the times set forth in Section 7.01(c) hereof, by paying to the Trustee the "Purchase Option Price", which for any date of calculation shall be the sum of (i) the aggregate amount of unpaid principal of the Bonds to their maturity date under the terms of the Bond Resolution and as set forth in the Lessee's notice to the Trustee of such prepayment, (ii) any interest payable on the Bonds from the last Interest Payment Date thereof on which interest thereon was paid to the final maturity date set forth in clause (i) above, (iii) the redemption premium, if any, applicable to the payment of the Bonds on the maturity date set forth in clause (i) above, and (iv) any costs of redemption and defeasance, including Administrative Expenses, incurred by any party to a Program Document in implementing such prepayment.

(c) The prepayment options set forth in subsections (a) and (b) above may be

exercised by the Lessee at any time by (i) giving written notice to the Trustee and the Lessor of the exercise of such option at least fifty-two (52) days prior to the final maturity date set forth in such notice, and (ii) if the prepayment shall occur before \_\_\_\_\_, complying with any other requirements of Article XII of the Bond Resolution that may be required by the Trustee or the Lessor to defease the Bonds in accordance with the terms of the Bond Resolution, including, without limitation, a verification report from a nationally recognized accounting firm approved by the Trustee and the Lessor to the effect that the amount so prepaid shall equal the Purchase Option Price (for a full prepayment) and shall therefore be sufficient to defease the Bonds (in whole or in part, as the case may be) by paying all of the principal thereof and redemption premium, if any, thereon through and including the final maturity thereof, plus all interest accruing thereon to such final maturity date. Such option shall be exercised by depositing with said notice cash and/or Investment Securities in such amount as shall be sufficient, together with interest to accrue thereon, to pay the Bonds to be defeased on said redemption date.

(d) Notwithstanding any provision herein or in any Program Document to the contrary, without Lessor's prior written consent, the Lessee may not, directly or indirectly, advance refund, currently refund or otherwise refund any Series of Bonds with bonds, notes or other obligations of the Lessee, or such other moneys available to the Lessee, and use such moneys to make any prepayments hereunder unless (i) provision has been made by the Lessee for the payment of all (A) principal of, redemption premium if any, and interest on the Series of Bonds being refunded, plus any additional amounts necessary to effect a defeasance of such bonds, to any redemption date and (B) Administrative Expenses relating thereto, and (ii) if applicable, prior written notification of any such refunding has been given to the Lessor. Notwithstanding the foregoing, the Lessor may, in its sole discretion at the times and under the circumstances and for the purposes set forth in the Bond Resolution, advance refund, currently refund, or otherwise refund any Series of Bonds, the benefit of which shall be as the Lessor, in its sole discretion, shall determine.

#### **Section 7.02. Mandatory Prepayment and Purchase of Project; Mandatory Purchase Price.**

(a) Upon the acceleration of the Bonds, the Lessee shall forthwith prepay and purchase all of the Leased Property by paying to the Trustee, immediately upon receipt of notice of such acceleration, the "**Mandatory Purchase Price**", which for any date of calculation shall be the sum of (i) the aggregate amount of the unpaid principal of the Bonds, (ii) any interest accrued on the Bonds from the last Interest Payment Date thereof on which interest thereon was paid to the date that the amount in clause (i) above has been paid in full, and (iii) any costs of acceleration, additional amounts necessary to effect a defeasance of such bonds, and other Administrative Expenses incurred by any party to a Program Document in implementing such prepayment.

(b) In the event the Mandatory Purchase Price remains unpaid when due, the Lessee shall make an Additional Lease Payment immediately due and payable equal to, for any

date of such deficiency, the amount of such deficiency times the per diem Overdue Rate.

**Section 7.03. Effect of Prepayment.** In the event of a deposit sufficient to purchase the Leased Property pursuant to Section 7.01 or 7.02 hereof and to pay any and all amounts due hereunder (including amounts necessary to defease the Series 2010 Bonds), (i) all of the Lessor's right, title and interest in and to such Leased Property shall be deemed sold to the Lessee for the consideration set forth in such Sections, (ii) except for the rights of the Local Units to effect a fair market value purchase of their respective Renewable Energy Projects (including the Leased Property) in accordance with Section 6.09(d) hereof and any Program Document, to the extent all Lease Payments have been made by the Lessee in full, all other covenants, agreements and obligations of the parties hereto under this Company Lease Agreement shall cease, terminate, and be deemed discharged and satisfied, and (iii) the Lessor and its officers shall take all actions necessary to authorize, execute and deliver to the Lessee any and all documents necessary to vest in the Lessee all of the Lessor's right, title and interest in and to the Leased Property, free and clear of all liens, leasehold interests and encumbrances, including, if necessary, a release of any and all liens or interests created under the provisions of this Company Lease Agreement. In such event, the Trustee shall cause a statement of debits and credits for such period or periods as shall be requested by the Lessor or the Lessee to be prepared and filed with the Lessor and the Lessee, and, upon the request of the Lessor or the Lessee, shall execute and deliver to the Lessor and the Lessee all such instruments as may be desirable to evidence such discharge and satisfaction.

**Section 7.04. Substitution of Project.** Subject to the terms of the Program Documents, the Lessee is hereby granted the full power of substitution with respect to any Project so long as the Lessor and the Trustee receive the prior written consent of the Applicable Local Unit and the Authority, along with revised Exhibits to the Applicable Program Documents.

## **ARTICLE VIII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

### **Section 8.01. Damage, Destruction and Condemnation.**

(a) If either (i) the Projects or any portion thereof are destroyed or damaged by fire or other casualty or (ii) title to or the temporary use of the Projects or any part thereof, or the interest of the Lessor, the Applicable Local Unit or the Lessee in the Projects or any part thereof, shall be taken under a valid exercise of the power of eminent domain by any governmental body, other than Union County or a division of Union County government, or by any person, firm or corporation acting under governmental authority, and provided the Lessee shall not have caused an Event of Default hereunder, in which event the Net Proceeds shall be applied as directed by the Lessor, the Lessee shall have the following mutually exclusive rights to cause the application of Net Proceeds sufficient to perform either of the following, which the Lessee may exercise in its sole discretion: (y) the Lessee shall cause the application of any Net Proceeds to the prompt repair, restoration, modification, improvement, construction or installation of the Project by

causing the Lessor to transfer, and upon the Lessor's receipt of a Certificate of an Authorized Officer of the Lessee to such effect the Lessor shall so transfer, such Net Proceeds to the Trustee for deposit in the Project Fund, thereby allowing the Lessee to file with the Trustee the appropriate Draw Papers to requisition such Net Proceeds from the Project Fund in accordance with the terms hereof, in which event the Lessee shall continue to be obligated to pay the Lease Payments due hereunder, without adjustment; or (z) the Lessee shall exercise its option to purchase the Project in whole by paying the then applicable Purchase Option Price in accordance with Section 7.01 hereof and causing the Lessor to deposit, and upon the Lessor's receipt of a Certificate of an Authorized Officer of the Lessee to such effect the Lessor shall so deposit, such Net Proceeds with the Trustee in the Revenue Fund, the Debt Service Fund, or such other Fund or Account that would allow the application of the Net Proceeds toward the Purchase Option Price. Subsections (y) and (z) above are mutually exclusive.

(b) If title to or the temporary use of the Projects or any part thereof, or the interest of the Lessor, the Applicable Local Unit or the Lessee in the Projects or any part thereof, shall be taken under a valid exercise of the power of eminent domain by Union County or a division of Union County government, and provided the Lessee shall not have caused an Event of Default hereunder, in which event the Net Proceeds shall be applied as directed by the Lessor, the Lessee shall have the following mutually exclusive rights to cause the application of Net Proceeds sufficient to perform either of the following, which the Lessee may exercise in its sole discretion:

(y) the Lessee shall cause the application of any Net Proceeds to the prompt repair, restoration, modification, improvement, construction or installation of the Project by causing the Lessor to transfer, and upon the Lessor's receipt of a Certificate of an Authorized Officer of the Lessee to such effect the Lessor shall so transfer, such Net Proceeds to the Trustee for deposit in the Project Fund, thereby allowing the Lessee to file with the Trustee the appropriate Draw Papers to requisition such Net Proceeds from the Project Fund in accordance with the terms hereof, in which event the Lessee shall continue to be obligated to pay the Lease Payments due hereunder, without adjustment; or (z) the Lessee shall exercise its option to have no further obligation with respect to the affected Project(s). Subsections (y) and (z) above are mutually exclusive.

**Section 8.02. Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement relating to the Projects as so damaged or taken, the Lessee shall either:

(a) direct the application of the Net Proceeds in the manner as set forth in Sections 8.01(a)(y) or 8.01(b)(y) above, thereby requiring the Lessee to complete the work relating to the Projects as so set forth, except that the Lessee shall itself pay any Project Costs in excess of the amount of the Net Proceeds, and, if by reason of any such insufficiency of the Net Proceeds the Lessee shall make any payments pursuant to the provisions of this Section 8.02(a), the Lessee shall not be entitled to any reimbursement therefor from the Lessor, nor shall the Lessee be entitled to any diminution of the Lease Payments due hereunder with respect to the Projects;

(b) direct the application of the Net Proceeds in the manner as set forth in Section

8.01(a)(z) above, thereby requiring the Lessee to make an equity contribution to the extent the Net Proceeds are insufficient to cover the Purchase Option Price and thereupon exercise Lessee's option to purchase the Project in whole, in accordance with Article VII hereof, in which event the Net Proceeds shall be used toward this purpose; or

(c) direct the application of the Net Proceeds in the manner as set forth in Sections 8.01(b)(z) above, thereby causing the Net Proceeds to be applied to the payment of the Interest Portion and, to the extent available, the Principal Portion of the Basic Lease Payments due on the immediately succeeding Basic Lease Payment Dates until all of the Net Proceeds have been so applied, in which event the Lessee shall not be entitled to any reimbursement therefor from the Lessor nor shall the Lessee be entitled to any diminution of the Lease Payments due hereunder with respect to the Project. Subsections (a), (b) and (c) above are mutually exclusive.

**Section 8.03. Cooperation of Lessor.** The Lessor and the Applicable Local Unit shall cooperate fully with the Lessee, at the sole cost and expense of the Lessee, in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 8.01 hereof and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Projects or any part thereof. In no event shall the Lessor or the Applicable Local Unit voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Projects or any part thereof, without the prior written consent of the Lessee.

**Section 8.04. Condemnation of Other Property Owned by Lessee.** The Lessee shall be entitled to the Net Proceeds of any condemnation award or portion thereof made for the destruction of, damage to or taking of its property not included in the Project.

## **ARTICLE IX ASSIGNMENT, SUBLEASING, MORTGAGING AND SELLING**

**Section 9.01. Assignment by Lessor.** Except as provided herein and in any other Program Document, including without limitation the Bond Resolution, the Power Purchase Agreement and the License Agreements, the Lessor shall not assign its obligations under this Company Lease Agreement. All of the Lessor's right, title and interest in and to this Company Lease Agreement, the Lease Payments and the other amounts due to it hereunder and under the Company Documents may be assigned by the Lessor to the Trustee, without the consent of Lessee and upon such terms and conditions as the Lessor shall determine in its sole discretion, pursuant to the pledge of the Trust Estate under the Bond Resolution following the execution and delivery hereof.

**Section 9.02. Reserved.**

**Section 9.03. Assignment and Subleasing by Lessee.** This Company Lease Agreement

may not be assigned or subleased by the Lessee without the prior written consent of the Lessor, which consent shall be exercised in its sole discretion. Any such purported assignment or sublease shall be deemed null and void without such prior written consent.

**Section 9.04. Restriction on Mortgage or Sale of Project by Lessee.** The Lessee shall not mortgage, sell, assign, transfer or convey the Projects or any portion thereof during the Term of this Company Lease Agreement without the prior written consent of the Lessor, which shall be exercised in its sole discretion.

## **ARTICLE X EVENTS OF DEFAULT; REMEDIES**

### **Section 10.01. Events of Default.**

(a) An Event of Default hereunder means the occurrence of any one or more of the following events:

(i) The Lessee fails to (A) make any Basic Lease Payment or any Additional Lease Payment as it becomes due or (B) maintain any insurance requirement set forth hereunder.

(ii) The Lessee fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under any Program Document, and such failure is not cured within thirty (30) days (or such shorter period provided in the Program Document) after written notice thereof has been given to the Lessee by the Lessor or the Trustee; provided, however, that if such failure cannot be cured within said thirty (30) day period (or such shorter period provided in the Program Document), the Lessee shall not be in default if it has commenced to cure within such period if such action to cure the default is acceptable to the Lessor and the Lessor indicates the same in writing; and provided, further, that such period to cure shall not extend beyond ninety (90) days (or such shorter period provided in the Program Document) from the date the Lessee initially fails to perform or observe any other covenant, condition or agreement giving rise to the Event of Default.

(iii) The discovery by the Lessor or the Trustee or any Local Unit that any material statement, representation or warranty made by the Lessee in this Company Lease Agreement or any other Program Document, or in any writing delivered by the Lessee pursuant hereto or in connection herewith, is false, misleading or erroneous in any material respect.

(iv) The Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment

of a trustee, receiver or custodian for the Lessee or a substantial part of its property; or in the absence of such application, consent or acquiescence, a trustee, receiver or custodian is appointed for the Lessee or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement, moratorium or other proceeding under bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or, if permitted by law, against the Lessee and, if instituted against the Lessee, is consented to or acquiesced in by the Lessee or is not dismissed within sixty (60) days.

(v) The entering of an order or decree appointing a receiver for the Lessee or for any of its property or for the revenues thereof with or without the consent or acquiescence of the Lessee, and such order or decree shall not be vacated, discharged or stayed within ninety (90) days after the date of such entry.

(b) Upon the occurrence of an Event of Default under this Section 10.01, the Trustee shall transmit a written notice, including electronic mail, of such Event of Default to the Lessor, the Lessee and the Local Units within thirty (30) days of the Trustee's knowledge thereof.

(c) Upon the occurrence of an Event of Default under this Section 10.01, all obligations of the Lessee under this Company Lease Agreement shall remain in full force and effect.

#### **Section 10.02. Remedies.**

(a) Upon the occurrence and continuation of any Event of Default hereunder, the Lessor shall have the right, without any further demand or notice, to take one or any combination of the remedial steps below:

(i) Terminate this Company Lease Agreement and declare the Mandatory Purchase Price with respect to the Project to be immediately due and payable by the Lessee.

(ii) With or without terminating this Company Lease Agreement, take possession of the Renewable Energy Projects, including the Leased Property and assume all of Lessee's rights under the Power Purchase Agreement and License Agreements, and exclude the Lessee from using the Renewable Energy Projects, in which event the Lessee shall continue to be responsible for the Lease Payments due hereunder during the remainder of the Lease Term.

(iii) With or without terminating this Company Lease Agreement, take possession of the Renewable Energy Projects, including the Leased Property and assume all of Lessee's rights under the Power Purchase Agreement and License Agreements, and

assign, sell, lease or sublease its interests therein or any part thereof, in which event the Lessee shall continue to be responsible for the Lease Payments due hereunder during the remainder of the Lease Term, but shall receive a credit for any amounts actually received by Lessor from the assignee, purchaser or sublessee and credited to the Lease Payments due hereunder.

(iv) With or without terminating this Company Lease Agreement, take possession of the Renewable Energy Projects and assume all of Lessee's rights under the Power Purchase Agreement and License Agreements, and apply any portion of same, or of the proceeds of same (in accordance with clause (iii) above) in accordance with the provisions of Section 5.07(1)(b) of the Bond Resolution

(v) With or without terminating this Company Lease Agreement, declare all Lease Payments due or to become due hereunder to be immediately due and payable by the Lessee, whereupon such Lease Payments shall be immediately due and payable.

(vi) Take whatever action at law or in equity may appear necessary or desirable to collect the Lease Payments then due and thereafter to become due hereunder with respect to the Project or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Company Lease Agreement.

**Section 10.03. Reinstatement.** In the event of the termination of this Company Lease Agreement by the Lessor following an Event of Default by Lessee hereunder, if (a) all arrears of interest on such Outstanding Bonds and interest on overdue installments of principal, redemption premium, if any, and (to the extent permitted by law) interest on such Bonds at a rate per annum equal to the highest rate per annum borne by any of the Bonds shall have been paid, (b) the principal and redemption premium, if any, on all Outstanding Bonds that have become due and payable (other than by an acceleration) shall have been paid, (c) all other sums payable under the terms of the Bond Resolution, except the principal of and the interest on such Bonds that by such acceleration shall have become due and payable, and under the terms of the other Program Documents shall have been paid, (d) all other things shall have been performed in respect of which there was an Event of Default, (e) the reasonable fees and expenses of the Lessor, the Trustee, the Local Units, the County, the County Security Provider, and the Bondholders, including Administrative Expenses thereof (including reasonable attorneys' fees paid or incurred) shall have been paid, and (f) such acceleration under the terms of the Bond Resolution is rescinded, then the Lessor may, in its sole discretion, waive Lessee's Event of Default. Upon such payment and waiver, this Company Lease Agreement shall be fully reinstated as if it had never been terminated, and the Lessee shall be restored to the use, occupancy and possession of the Renewable Energy Projects and the other Leased Property.

**Section 10.04. Election of Remedies; No Waiver of Elected Remedies.** No failure on the part of either party to exercise, and no delay in exercising any right or remedy so provided

for herein, shall operate as a waiver thereof, nor shall any single or partial exercise by either party of any right or remedy so provided hereunder preclude any other or further exercise of any other right or remedy provided hereunder.

**Section 10.05. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Company Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder, and shall not be construed to be an implied term hereof or a course of dealing between the parties hereto.

**Section 10.06. Agreement to Pay Attorneys' Fees and Expenses.** In the event either party to this Company Lease Agreement should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement, performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it shall, on demand therefor, pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

**Section 10.07. Late Charges.** Whenever any payment of Lease Payments is not made when due, the Lessee promises to pay to the Lessor, in addition to the amount due, interest thereon at the Overdue Rate; provided, however, that this Section 10.07 shall not be applicable if or to the extent the application thereof would affect the validity of this Company Lease Agreement.

**Section 10.08. Delay; Notice.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof. Any such right or power may be exercised from time to time and as often as may be deemed expedient, and any one exercise thereof shall not be deemed an exclusive exercise. To entitle any party to exercise any remedy reserved to it in this Company Lease Agreement, it shall not be necessary to give any notice other than as may be specifically required in this Company Lease Agreement.

## **ARTICLE XI ADMINISTRATIVE PROVISIONS**

**Section 11.01. Notices.** Unless otherwise provided in writing, any notices to be given or to be served upon any party hereto, or any other documents to be delivered to any Renewable Energy Program Interested Party, all in connection with this Company Lease Agreement, must be in writing and may be delivered personally, by telecopy, by e-mail, or by overnight, certified or registered mail. If such notice or document is delivered by certified or registered mail, it shall be deemed to have been given and received forty-eight (48) hours after a registered or certified letter containing such notice, postage prepaid, is deposited in the United States mail. If such

notice or document is delivered by telecopy or e-mail, a hard copy of such notice or document shall be sent by certified or registered mail, although such notice or document shall be deemed to have been delivered upon receipt of the telecopy or e-mail by such party or other Renewable Energy Program Interested Party. If such notice is given or document is delivered otherwise, it shall be deemed to have been given or delivered, as applicable, when delivered to and received by the party or other Renewable Energy Program Interested Party to whom it is addressed. Such notice or document shall be given to the parties or other Renewable Energy Program Interested Party at their following respective addresses or at such other address as any party or other Renewable Energy Program Interested Party may hereafter designate to the other parties hereto in writing:

(a) If to Lessor: 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](mailto:ucia@verizon.net)

With a copy to: Ryan J. Scerbo, Esq.  
DeCotiis, FitzPatrick, & Cole, LLP  
Glenpointe Centre West  
500 Frank W. Burr Boulevard  
Teaneck, New Jersey 07666  
Email: rscerbo@decotiislaw.com

(b) If to the Lessee:

With a copy to:

(c) If to the Trustee:

With a copy to:

(d) If to the Local Units: See **Exhibit A-4** attached hereto.

(e) If to the Construction Manager:

**Section 11.02. Severability.** In the event any provision of this Company Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 11.03. Amendments, Changes and Modifications.**

(a) This Company Lease Agreement may be amended, supplemented, or otherwise modified with respect to the recomputation of Basic Lease Payments or Additional Lease Payments related to the Purchase Option Price or Mandatory Purchase Price, or with respect to any other term of this Company Lease Agreement affecting the security of the Bond Resolution, by (i) written amendment authorized executed and delivered by each of the Lessor and the Lessee and (ii) by compliance with Article XI of the Bond Resolution regarding conditions required for amendment of the Bond Resolution, which may include the consent of the Trustee.

(b) Other than as provided in subsection (a) above, this Company Lease Agreement may be amended, supplemented, or otherwise modified with respect to its Term or any of its other provisions by written amendment authorized and executed by the Lessor, the Lessee, and to the extent any of the rights, duties or obligations of any Local Units or other Renewable Energy Program Interested Parties under a Program Document are affected, with the written acknowledgment and consent of any one or more such Local Units and/or Renewable Energy Program Interested Parties, as applicable.

(c) To the extent Bonds are Outstanding at the time of any amendment, supplement or modification of this Company Lease Agreement, any such proposed amendment, supplement or modification, in substantially final form, shall be delivered by the Lessor at least fifteen (15) days in advance of its execution to the Trustee and each rating agency that at such time is rating any such Bonds, unless this provision is waived by any such rating agency and the Trustee; moreover, no such amendment, supplement or modification shall be entered into by the parties unless there shall be no adverse affect on the rating of such Bonds. Where there shall be no such adverse affect on the rating of such Bonds, a final copy of any such authorized, executed and delivered amendment, supplement or modification of this Company Lease Agreement shall be promptly delivered to each such rating agency and the Trustee.

**Section 11.04. Further Assurances and Corrective Instruments.** The Lessor and the Lessee agree that they shall, if necessary, execute, acknowledge and deliver such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Projects or the Leased Property, or any inadequate or incorrect description intended so to be, or for carrying out the expressed intention of this Company Lease Agreement.

**Section 11.05. Applicable Law.** This Company Lease Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 11.06. Lessor and Lessee Officers.** Whenever under the provisions of this Company Lease Agreement the approval of the Lessor or the Lessee is required or the Lessor or the Lessee is required to take some action at the request of the other, such approval of such request shall be given for each party by its respective Authorized Officer, and any party hereto

shall be authorized to rely upon any such approval or request.

**Section 11.07. Captions.** The captions or headings in this Company Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Company Lease Agreement.

**Section 11.08. Company Lease Agreement is Original.** For all purposes of filing, perfection or any other matter requiring identification or possession of the “original” copy of a lease, the executed original hereof identified as the “original” shall be the “original” to evidence this Company Lease Agreement.

**Section 11.09. Binding; Counterparts.** This Company Lease Agreement shall be binding upon the parties hereto only when duly executed on behalf of both the Lessor and the Lessee together; provided, however, that each set of counterparts taken together shall constitute an original.

**Section 11.10. Inspections Permitted.** The Lessee shall, whenever requested, advise the Lessor and the Applicable Local Units of the exact location and condition of the Projects and Leased Property. The Lessor and the Applicable Local Units may enter upon the premises of the Projects for the purpose of inspection at all reasonable times, and, upon reasonable notice, may enter upon the job, building or place where the Projects and the books and records of the Lessee with respect thereto are located.

**Section 11.11. Time is of the Essence.** Time is of the essence with respect to this Company Lease Agreement, and no covenant or obligation hereunder to be performed by the Lessee may be waived except by the written consent of the Lessor and the Lessee. Waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation or any other covenant or obligation as to any other occasion and shall not preclude the Lessor from invoking such remedy at any later time prior to the Lessee’s cure of the condition giving rise to such remedy. Each of the Lessor’s rights hereunder is cumulative to its other rights hereunder and not alternative thereto.

**Section 11.12. No Personal Liability or Accountability.** No covenant or agreement contained in this Company Lease Agreement shall be deemed to be the covenant or agreement of any present, past or future officer, agent or employee of the Lessor or the Lessee, in his or her individual capacity, and neither the officers, agents or employees of the Lessor or the Lessee nor any official executing this Company Lease Agreement shall be liable personally on this Company Lease Agreement or be subject to any personal liability or accountability by reason of any transaction or activity relating to this Company Lease Agreement.

**Section 11.13. Gender.** Use of the masculine, feminine or neuter gender herein is for purposes of convenience only and shall be deemed to mean and include the other genders

whenever and wherever appropriate.

**Section 11.14. Receipt of Company Lease Agreement.** The parties hereto each acknowledge receipt of a signed, true and exact copy of this Company Lease Agreement.

**IN WITNESS WHEREOF**, the Lessor and the Lessee have each caused this Company Lease Agreement to be executed in its name by its respective duly authorized officers, all as of the date first above written.

THE UNION COUNTY IMPROVEMENT  
AUTHORITY, as Lessor

[SEAL]

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
      , Secretary

[COMPANY],  
as Lessee  
By: \_\_\_\_\_, Managing Member

[SEAL]

By: \_\_\_\_\_

ATTEST:

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



**STATE OF NEW JERSEY )**  
**) ss.:**  
**COUNTY OF UNION )**

On this \_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ known to me (or proved to me on the basis of satisfactory evidence) to be the \_\_\_\_\_, Managing Member of the Company, that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of said Company.

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **1. DESCRIPTION OF PROJECTS AND LEASED PROPERTY**

**EXHIBIT A-1:** See attached Description of Renewable Energy Project and Leased Property for each Local Unit

**EXHIBIT A-2:** See attached Description of Capital Improvement Project for each Local Unit

### **2. BASIC LEASE PAYMENT SCHEDULE**

**EXHIBIT A-3:** See attached Basic Lease Payment Schedule

### **3. MAXIMUM PROJECT COSTS FINANCED BY THE SERIES 2010 BONDS**

The maximum Project Costs financed by the Series 2010 Bonds is the Maximum Bond Funded Project Cost Amount (\_\_\_\_\_).

## **EXHIBIT A-1**

All Renewable Energy Projects will utilize high efficiency, polycrystalline, glass Solar Panels. All roof mounted Renewable Energy Projects shall utilize racking systems specifically selected for each application and in accordance with the RFP specifications. All Renewable Energy Projects will be constructed with a tilt angle varying from 0 - 10 degrees from horizontal, facing south, to maximize overall installed capacity, ensuring the highest level of system output. All roof Module Mounting Systems shall be laid out in a manner that will provide for appropriate walkways for ease of access to the Renewable Energy Projects and other rooftop equipment such as HVAC units, vents and fans. All parking canopy systems shall utilize a T-Bar, full, cantilever construction and be 10' min clear height on leading edge. All Renewable Energy Projects shall be comprised of materials and equipment that meets the requirements of Appendix C of the Company Proposal.

## **EXHIBIT A-2**

Please see the Local Unit Facility Roof Warranty Chart at the end of this Exhibit A-2 for information concerning roof warrantors and duration of existing roof warranties for each Local Unit Facility. The Capital Improvement Projects set forth below related to maintaining and extending existing roof warranties must be compatible with the information contained in the Chart.

### **Local Unit Facility Roof Warranty Chart**

*See Attached*

**EXHIBIT A-3**

**BASIC LEASE PAYMENT SCHEDULE**

| <b>Basic Lease<br/>Payment Date</b> | <b>Interest Portion</b> | <b>Principal Portion</b> | <b>Total Basic Lease<br/>Payment</b> |
|-------------------------------------|-------------------------|--------------------------|--------------------------------------|
|                                     |                         |                          |                                      |

**EXHIBIT A-4**

**NOTICE INFORMATION FOR SERIES 2010 LOCAL UNITS**

## **EXHIBIT B**

### **FORMS OF ACCEPTANCE CERTIFICATES**

See Attached:

Form B-1, Form of REP Acceptance Certificate

Form B-2, Form of CIP Acceptance Certificate

## EXHIBIT B-1

### FORM OF REP ACCEPTANCE CERTIFICATE

I, the undersigned \_\_\_\_\_, a duly authorized officer of [Company] (the “**Company**”), pursuant to the terms of that certain “Lease Purchase Agreement (Union County Renewable Energy Program, Series 2010)” dated as of \_\_\_\_\_, 2010 (the “**Company Lease Agreement**”) between The Union County Improvement Authority, as lessor (the “**Authority**”), and the Company, as lessee, and with reference to the Renewable Energy Projects, or as applicable, any Completion Project related thereto (the “[A] **Renewable Energy Projects**”) being developed for [\_\_\_\_\_], as the Applicable Local Unit (the “**Local Unit**”) (capitalized terms not defined in this Certificate shall have the respective meanings ascribed to such terms in the Company Lease Agreement), **DO HEREBY CERTIFY** as follows:

1. As of \_\_\_\_\_, 20\_\_, the [A] Renewable Energy Projects have been designed, acquired, constructed, and installed, and therefore have been completed and delivered in good order and in conformance with the Plans and Specifications, and are ready for use.

2. The Company has previously submitted all eligible Draw Papers to the Trustee with respect to the [A] Renewable Energy Projects, against which the Company has received (or has directed receipt to a third party vendor) from the Trustee sufficient funds from the Project Fund to pay all Costs of the [A] Renewable Energy Projects, including the design, permitting, acquisition, construction and installation thereof[, or if such funds were insufficient, the Company has provided available funds to complete the design, permitting, acquisition, construction and installation thereof].

3. The [A] Renewable Energy Projects, having been designed, acquired, constructed and installed by or on behalf of the Company on the Local Unit Facilities for the Local Unit with a portion of the proceeds of the Bonds, are hereby accepted for use by the Company, with title thereto as set forth in Section 6.09(a) of the Company Lease Agreement, to generate renewable energy therefrom to be sold to the Local Unit, all as set forth in the Program Documents. This Section 3, together with the Local Unit’s acknowledgment below by an Authorized Officer thereof, shall constitute the Company’s and the Local Unit’s acceptance of the [A] Renewable Energy Projects for all purposes of Section 5.10(d)(i)(C) of the Company Lease Agreement and Section 5.02(3)(a)(i)(C) of the Bond Resolution.

4. [Attached hereto is one or more duly authorized, fully executed and delivered copy or copies of the [A] Interconnection Agreement(s) with the applicable local electric utility distribution provider with respect to all of the [A] Renewable Energy Projects.]

5. [*Choose one, as applicable*]

[This REP Acceptance Certificate is not the final Acceptance Certificate for purposes of Section 5.10(e) of the Company Lease Agreement and Section 5.02(3)(b) of the Bond Resolution, and

accordingly, any moneys on deposit in the Project Fund, if any, including interest, earmarked for the [A] Renewable Energy Projects shall remain on deposit in the Project Fund for Costs of other Projects.]

[This REP Acceptance Certificate is the final Acceptance Certificate for purposes of Section 5.10(e) of the Company Lease Agreement and Section 5.02(3)(b) of the Bond Resolution, and the Company shall not have caused an Event of Default under the Company Lease Agreement as of the date of this REP Acceptance Certificate, nor has the Company acted, or failed to act, in such a manner as would, with the passage of time, cause an Event of Default under the Company Lease Agreement. Accordingly, upon the Trustee's receipt of this duly authorized, executed and delivered REP Acceptance Certificate, any moneys on deposit in the Project Fund, without further authorization, shall be applied as set forth in accordance with the terms of the Bond Resolution and the Company Lease Agreement.]

[This REP Acceptance Certificate is the final Acceptance Certificate for purposes of Section 5.10(e) of the Company Lease Agreement and Section 5.02(3)(b) of the Bond Resolution, and the Company shall have either caused an Event of Default under the Company Lease Agreement as of the date of this REP Acceptance Certificate, or the Company has acted, or failed to act, in such a manner as would, with the passage of time, cause an Event of Default under the Company Lease Agreement. Accordingly, upon the Trustee's receipt of this duly authorized, executed and delivered REP Acceptance Certificate, any moneys on deposit in the Project Fund, shall be applied as set forth in a Certificate of an Authorized Officer of the Authority.]

6. This REP Acceptance Certificate may be executed, acknowledged and accepted in any number of counterparts, each of which may be executed by one or more of the respective parties, and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

[COMPANY], as Lessee  
By: \_\_\_\_\_, Managing Member

[SEAL]

By: \_\_\_\_\_

ATTEST:

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

The terms of this REP Acceptance Certificate are

hereby ACKNOWLEDGED and ACCEPTED by the Local Unit set forth below, this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[LOCAL UNIT]

By: \_\_\_\_\_

Name:

Title:

The form (only) of this REP Acceptance Certificate is hereby ACKNOWLEDGED by THE UNION COUNTY IMPROVEMENT AUTHORITY this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[By: CONSTRUCTION MANAGER]

By: \_\_\_\_\_

Name:

Title:

## EXHIBIT B-2

### FORM OF CIP ACCEPTANCE CERTIFICATE

I, the undersigned \_\_\_\_\_, a duly authorized officer of [Company] (the “**Company**”), pursuant to the terms of that certain “Lease Purchase Agreement (Union County Renewable Energy Program, Series 2010)” dated as of \_\_\_\_\_, 2010 (the “**Company Lease Agreement**”) between The Union County Improvement Authority, as lessor (the “**Authority**”), and the Company, as lessee, and with reference to the Capital Improvement Projects, or as applicable, any Completion Project related thereto (the “[A] **Capital Improvement Projects**”) being developed for [\_\_\_\_\_], as the Applicable Local Unit (the “**Local Unit**”) (capitalized terms not defined in this Certificate shall have the respective meanings ascribed to such terms in the Company Lease Agreement), **DO HEREBY CERTIFY** as follows:

1. As of \_\_\_\_\_, 20\_\_\_\_, the [A] Capital Improvement Projects have been designed, acquired, constructed, renovated, and installed, and therefore have been completed and delivered in good order and in conformance with the Plans and Specifications, and are ready for use.

2. The Company has previously submitted all eligible Draw Papers to the Trustee with respect to the [A] Capital Improvement Projects, against which the Company has received (or has directed receipt to a third party vendor) from the Trustee sufficient funds from the Project Fund to pay all Costs of the [A] Capital Improvement Projects, including the design, permitting, acquisition, construction, renovation, and installation thereof[, or if such funds were insufficient, the Company has provided available funds to complete the design, permitting, acquisition, construction, renovation, and installation thereof].

3. By obtaining the Local Unit’s execution of the acknowledgment below, the Company is satisfying the requirement regarding the Local Unit’s acceptance of (a) the [A] Capital Improvement Projects for all purposes of Section 5.10(d)(ii)(C) of the Company Lease Agreement and Section 5.02(3)(a)(ii)(C) of the Bond Resolution, which [A] Capital Improvement Projects, were designed, acquired, constructed, renovated, and installed by or on behalf of the Company on the Local Unit Facilities for the Local Unit with a portion of the proceeds of the Bonds, with title thereto as set forth in Section 6.09 of the Company Lease Agreement and (b) the CIP Acceptance State. This Section 3, together with the Local Unit’s acknowledgment below by an Authorized Officer thereof, shall constitute the Local Unit’s acceptance of the [A] Capital Improvement Projects for all purposes of Section 5.10(d)(ii)(C) of the Company Lease Agreement and Section 5.02(3)(a)(ii)(C) of the Bond Resolution.

4. *[Choose one, as applicable]*

[This CIP Acceptance Certificate is not the final Acceptance Certificate for purposes of Section 5.10(e) of the Company Lease Agreement and Section 5.02(3)(b) of the Bond Resolution, and

accordingly, any moneys on deposit in the Project Fund, if any, including interest, earmarked for the [A] Capital Improvement Projects shall remain on deposit in the Project Fund for Costs of other Projects.]

[This CIP Acceptance Certificate is the final Acceptance Certificate for purposes of Section 5.10(e) of the Company Lease Agreement and Section 5.02(3)(b) of the Bond Resolution, and the Company shall not have caused an Event of Default under the Company Lease Agreement as of the date of this CIP Acceptance Certificate, nor has the Company acted, or failed to act, in such a manner as would, with the passage of time, cause an Event of Default under the Company Lease Agreement. Accordingly, upon the Trustee's receipt of this duly authorized, executed and delivered CIP Acceptance Certificate, any moneys on deposit in the Project Fund, without further authorization, shall be transferred by the Trustee to the Debt Service Fund and applied as a credit to the next due Basic Lease Payments owed by the Company, in accordance with the terms of the Bond Resolution and the Company Lease Agreement.]

[This CIP Acceptance Certificate is the final Acceptance Certificate for purposes of Section 5.10(e) of the Company Lease Agreement and Section 5.02(3)(b) of the Bond Resolution, and the Company shall have either caused an Event of Default under the Company Lease Agreement as of the date of this CIP Acceptance Certificate, or the Company has acted, or failed to act, in such a manner as would, with the passage of time, cause an Event of Default under the Company Lease Agreement. Accordingly, upon the Trustee's receipt of this duly authorized, executed and delivered CIP Acceptance Certificate, any moneys on deposit in the Project Fund, shall be applied as set forth in a Certificate of an Authorized Officer of the Authority.]

5. This CIP Acceptance Certificate may be executed, acknowledged and accepted in any number of counterparts, each of which may be executed by one or more of the respective parties, and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

[COMPANY], as Lessee  
By: \_\_\_\_\_, Managing Member

[SEAL]

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name:  
Title:

The terms of this CIP Acceptance Certificate are hereby ACKNOWLEDGED and ACCEPTED by the Local Unit set forth below, this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[LOCAL UNIT]

By: \_\_\_\_\_

Name:

Title:

The form (only) of this CIP Acceptance Certificate is hereby ACKNOWLEDGED by THE UNION COUNTY IMPROVEMENT AUTHORITY this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[By: CONSTRUCTION MANAGER]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT C**

**FORM OF DRAW PAPERS**

Requisition No. \_\_\_\_

\_\_\_\_\_, \_\_, 20\_\_

[Trustee]

Re: The Union County Improvement Authority  
County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds,  
Series 2010 (the "Series 2010 Bonds")

Dear Sir or Madam:

Pursuant to (i) Section 5.10(c) of that certain "Lease Purchase Agreement (Union County Renewable Energy Program, Series 2010)" dated as of \_\_\_\_\_, 2010 (the "**Company Lease Agreement**") by and between The Union County Improvement Authority (the "**Authority**"), as lessor, and [Company] (the "**Company**"), as lessee, and (ii) Section 5.02(2) of the Authority's bond resolution duly adopted \_\_\_\_\_ and entitled "Resolution Authorizing the Issuance of County Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2010 and Additional Bonds of The Union County Improvement Authority", as amended and supplemented, and (iii) with respect to the [Renewable Energy Projects, or as applicable, any Completion Project related thereto (the "[A] **Renewable Energy Projects**")] [Capital Improvement Projects, or as applicable, any Completion Project related thereto (the "[A] **Capital Improvement Projects**")] being developed for [\_\_\_\_\_], as the Applicable Local Unit (the "**Local Unit**") (capitalized terms not defined in this Certificate shall have the respective meanings ascribed to such terms in the Company Lease Agreement), the Company, by its Authorized Officer stated below, **DOES HEREBY CERTIFY** and **REQUISITION** moneys on deposit in the Project Fund and held by [Trustee], as trustee (the "**Trustee**") for the holders of the Series 2010 Bonds, as follows:

1. The Trustee is hereby requested to pay \$\_\_\_\_\_ from moneys on deposit in the Project Fund (equal to the aggregate Project Costs for which payment or reimbursement is being sought by this requisition of \$\_\_\_\_\_, less the required ten percent (10%) retainage of \$\_\_\_\_\_),

(a) \$\_\_\_\_\_ of which aggregate amount shall be payable to:

[\_\_\_\_\_ for  
\_\_\_\_\_ services] [incurred in connection  
with the following Development Contract: \_\_\_\_\_];

[the Company for reimbursement of Costs of the Project previously paid by the Company to \_\_\_\_\_ for \_\_\_\_\_ services] [incurred in connection with the following Development Contract: \_\_\_\_\_]; and

(b) \$\_\_\_\_\_ of which aggregate amount shall be payable to:

[\_\_\_\_\_ for \_\_\_\_\_ services] [incurred in connection with the following Development Contract: \_\_\_\_\_]

[the Company for reimbursement of Costs of the Project previously paid by the Company to \_\_\_\_\_ for \_\_\_\_\_ services] [incurred in connection with the following Development Contract: \_\_\_\_\_]

{Please Note, Include Name and Address of any Contractor and the specific Development Contract pursuant to which this Requisition is submitted}

2. (a) Such funds requested in accordance with Section 1(a) of this Requisition were incurred in connection with the [acquisition, construction, or installation of the [A] Renewable Energy Projects listed on **Exhibit A-1**] [acquisition, construction, renovation or installation of the [A] Capital Improvement Projects listed on **Exhibit A-2**] to the Company Lease Agreement, to be financed by a portion of the proceeds of the Series 2010 Bonds, and all with respect to the following Local Unit Facilities of the Local Unit: \_\_\_\_\_.

(b) Such funds requested in accordance with Section 1(b) of this Requisition were incurred in connection with the [acquisition, construction, or installation of the [A] Renewable Energy Projects listed on **Exhibit A-1**] [acquisition, construction, renovation or installation of the [A] Capital Improvement Projects listed on **Exhibit A-2**] to the Company Lease Agreement, to be financed by a portion of the proceeds of the Series 2010 Bonds, and all with respect to the following Local Unit Facilities of the Local Unit: \_\_\_\_\_.

3. Such payment obligation, for which funds have been requested in accordance with Section [1(a)] [1(b)] of this Requisition, (i) has been properly incurred in accordance with the Plans and Specifications, (ii) is an item of the Cost of such Project, (iii) is a proper charge against the Project Fund, (iv) has not been the basis of any previous withdrawal, and (v) attached hereto is a bill, invoice, receipt or other evidence that payment on such Project Cost is due and owing or has been paid by or on behalf of the Company. The Company represents and warrants that there are no liens or encumbrances on any Projects. This Requisition, together with any such attachments contemplated by clause (v) above, shall constitute Draw Papers submitted on a

Draw Date for all purposes of the Company Lease Agreement, the Bond Resolution and the License Agreement for the Local Unit.

4. This requisition may be executed, acknowledged and accepted in any number of counterparts, each of which may be executed by one or more of the respective parties, and all of which shall be regarded for all purposes as one original and shall constitute and be but one and the same.

Very truly yours,  
[COMPANY], as Lessee  
By: \_\_\_\_\_, Managing Member

[SEAL]

By: \_\_\_\_\_  
Authorized Officer

ATTEST:

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

The terms of this Requisition are hereby  
ACKNOWLEDGED and ACCEPTED by the Local  
Unit set forth below, this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[LOCAL UNIT]

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

The form (only) of this Requisition is hereby  
ACKNOWLEDGED by THE UNION COUNTY  
IMPROVEMENT AUTHORITY this \_\_\_\_ day of  
\_\_\_\_, 20\_\_.

[By: CONSTRUCTION MANAGER]

By: \_\_\_\_\_

Name:  
Title:

**EXHIBIT C-1**

**[Attach Initial Project Workforce Form AA201]**

[Insert Imanage Document 1010459.1]

**EXHIBIT D**

**CERTIFICATE OF AN AUTHORIZED OFFICER OF THE LESSEE  
WITH RESPECT TO COMPANY DEVELOPMENT FEES AND EXPENSES**

The Union County Improvement Authority  
10 Cherry Street  
Elizabeth, New Jersey 07202  
Attention: Executive Director

[Trustee]

Re: The Union County Improvement Authority  
County of Union Guaranteed Renewable Energy Program Lease Revenue Bonds,  
Series 2010 (the “**Series 2010 Bonds**”)

Dear Sir or Madam:

Pursuant to (i) Section 5.09(d) of that certain “Lease Purchase Agreement (Union County Renewable Energy Program, Series 2010)” dated as of \_\_\_\_\_, 2010 (the “**Company Lease Agreement**”) by and between The Union County Improvement Authority (the “**Authority**”), as lessor, and [Company] (the “**Company**”), as lessee, and (ii) Section 5.03(2)(b) of the Authority’s bond resolution duly adopted \_\_\_\_\_ and entitled “Resolution Authorizing the Issuance of County Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2010 and Additional Bonds of The Union County Improvement Authority”, as amended and supplemented, (capitalized terms not defined in this Certificate shall have the respective meanings ascribed to such terms in the Company Lease Agreement), the Company, by its Authorized Officer stated below, **HEREBY REQUESTS** that the Authority direct the Trustee (which direction has occurred through Section 5.03(2)(b) of the Bond Resolution) to pay the following Company Development Fees and Expenses incurred by or on behalf of the Company from moneys on deposit in the Project Fund in the aggregate amount of \$\_\_\_\_\_, which amount shall be payable to

[\_\_\_\_\_  
for \_\_\_\_\_ services]

[the Company for reimbursement of Company Development Fees and Expenses previously paid  
by \_\_\_\_\_ the \_\_\_\_\_ Company \_\_\_\_\_ to

\_\_\_\_\_ for \_\_\_\_\_ services].

Such payment obligation has been properly incurred in accordance with all applicable law, is a Company Development Fees and Expense as such term is defined in the Bond Resolution, including without limitation within the aggregate ceiling of \$\_\_\_\_\_ for such defined term (unless the Authority agrees, below or otherwise in writing, to an increase above such ceiling), is a proper charge against the Project Fund, and has not been the basis of any previous withdrawal. Attached hereto is a bill, invoice, receipt or other evidence that payment of said Company Development Fees and Expenses is due or has been paid by or on behalf of the Company.

Very truly yours,  
[COMPANY], as Lessee  
By: \_\_\_\_\_, Managing Member

[SEAL]

By: \_\_\_\_\_

ATTEST:

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

The form (only) of this Certificate is hereby  
ACKNOWLEDGED by THE UNION COUNTY  
IMPROVEMENT AUTHORITY this \_\_\_\_ day of  
\_\_\_\_, 20\_\_.

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

**EXHIBIT E**

**[Attach form of Company Continuing Disclosure Agreement]**