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

**By and Between**

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

**and**

**[COMPANY], as Lessee**

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

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with respect to The Somerset County Improvement Authority's  
not to exceed \$55,000,000 aggregate principal amount of  
County of Somerset Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2010 (Federally Taxable)

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

THIS “**LEASE PURCHASE AGREEMENT (Somerset County Renewable Energy Program, Series 2010)**” (including any amendments or supplements hereto from time to time in accordance with the terms hereof, this “**Company Lease Agreement**”), dated as of \_\_\_\_\_, 2010, is made by and among **THE SOMERSET COUNTY IMPROVEMENT AUTHORITY** (including any successors and assigns, the “**Authority**” or “**Lessor**”), duly created by ordinance of the Board of Chosen Freeholders (“**Board of Freeholders**”) of the County of Somerset (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 \_\_\_\_\_, a limited liability company organized and existing under the laws of the State of \_\_\_\_\_, duly authorized to conduct business in the State (including any successors and assigns, the “**Company**” or “**Lessee**”).

\_\_\_\_\_  
\_\_\_\_\_

**WHEREAS**, the Somerset County Improvement Authority (including any successors and assigns, the “*Authority*”) has been duly created by resolution duly adopted by the Board of Chosen Freeholders (the “*Board of Freeholders*”) of the County of Somerset (the “*County*”) in the State of New Jersey (the “*State*”) as a public body corporate and politic of the State pursuant to and in accordance with 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 (the “*Act*”), and other applicable law;

**WHEREAS**, the Authority is developing a program (the “*Renewable Energy Program*”) for the financing, design, permitting, acquisition, construction, installation, operation and maintenance of renewable energy capital equipment and facilities such as solar panels, wind turbines, and hydro-electric, bio-diesel, geothermal, and bio-mass facilities, including any related electrical modifications, work related to the maintenance of roof warranties, or other work required, desirable or convenient for the installation of such systems (collectively, the renewable energy capital equipment and facilities, the “*Renewable Energy Projects*”) for and on behalf of the County and its affiliates, and the local governmental units within the County, including without limitation municipalities, boards of education for school districts, local authorities and any other local government instrumentalities, public bodies or other local government entities (collectively, including the County, the “*Local Units*”);

**WHEREAS**, the Renewable Energy Projects procured under the Renewable Energy Program are to be installed on, in, affixed or adjacent to and/or for any other Local Unit controlled buildings, other structures, lands or other properties of the Local Units (collectively, the “*Local Unit Facilities*”);

**WHEREAS**, it may be necessary, desirable or convenient, in connection with the financing, design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects, to finance, design, permit, acquire, construct, renovate and install certain capital improvements to the Local Unit Facilities, including without limitation, improvements to or replacement of, roofing systems, if any (the “*Capital Improvement Projects*” and together with the Renewable Energy Projects and any Completion Project as defined in the hereinafter defined Bond Resolution, the “*Projects*”), and to the extent no Capital Improvement Projects are so financed, references herein shall have no meaning;

**WHEREAS**, the primary goal of the Renewable Energy Program is to expand the use of renewable energy sources available and utilized by the Local Units for their Local Unit Facilities, with the attendant environmental and financial benefits associated thereby, and to reduce the energy related operating costs to the Local Units for their Local Unit Facilities, all intended to be offered at no scheduled net cost to the Local Units;

**WHEREAS**, the Authority is presently funding the engineering, energy consulting, legal, financial advisory and other preliminary costs of the Renewable Energy Program necessary, desirable or convenient for the development and implementation of the Renewable Energy Program (the “*Preliminary Program Costs*”) prior to the issuance of Authority bonds that shall finance Renewable Energy Program, including the hereinafter defined Series 2010 Bonds;

**WHEREAS**, in order to implement the initial tranche of the Renewable Energy Program, the Authority has determined to finance the respective Renewable Energy Projects and Capital Improvement Projects, if any, on the respective Local Unit Facilities, all as set forth on Exhibits B, C, and A to the hereinafter defined Local Unit License Agreement for each of the following participating Local Units:

- (i) Borough of Bound Brook, Township of Bridgewater, Township of Franklin, Borough of Manville, Borough of Somerville, Township of Montgomery (collectively, the “*Municipal Series 2010 Local Units*”); and
- (ii) Board of Education of the Township of Branchburg, Bridgewater-Raritan Regional Board of Education, Franklin Township Board of Education, Board of Education of Green Brook Township, Manville Board of Education, Montgomery Township Board of Education, Somerville Board of Education (collectively, the “*Board of Education Series 2010 Local Units*”); and
- (iii) County and Raritan Valley Community College (collectively, the “*County*”);

*Series 2010 Local Units*”);

(each a “*Series 2010 Local Unit*”, and collectively, the “*Series 2010 Local Units*”), through the issuance by the Authority of one or more series of its notes or bonds entitled “County of Somerset Guaranteed Renewable Energy Program Lease Revenue [Notes] Bonds, Series 2010 (Federally Taxable)” dated their date of delivery, Outstanding (in the aggregate at any one time under and as defined in the Bond Resolution) in principal amount (including sinking fund installments, if any) not to exceed \$55,000,000 (the “*Series 2010 Bonds*”);

**WHEREAS**, any notes issued as Series 2010 Bonds may be refunded through the issuance of one or more series of notes or bonds issued as Series 2010 Bonds, so long as (i) the principal amount of such notes or bonds, each issued as Series 2010 Bonds and Outstanding, together with all other Outstanding Series 2010 Bonds, does not exceed \$55,000,000 and (ii) the interest rates thereon do not exceed the maximum interest rates set forth in the hereinafter defined Local Finance Board Application;

**WHEREAS**, to the extent so requested by the County for County investment purposes, (i) the Authority shall sell one or more series of Series 2010 Bonds, in an aggregate principal amount not to exceed \$10,000,000, directly to the County (the “*Series 2010B Bonds*”), (ii) in which case the balance of the Series 2010 Bonds (the “*Series 2010A Bonds*”, and together with the Series 2010B Bonds, the previously defined “*Series 2010 Bonds*”) shall be issued (a) in one or more series, and (b) in an aggregate principal amount equal to (I) the maximum (i.e., \$55,000,000) authorized, aggregate principal amount of Series 2010 Bonds that may be Outstanding (as defined in the Bond Resolution), less (II) the aggregate principal amount of Series 2010B Bonds issued and Outstanding at the time of issuance of the Series 2010A Bonds;

**WHEREAS**, the Series 2010 Bonds shall also finance all other 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, including without limitation (i) all or a portion of the Preliminary Program Costs, Administrative Expenses and Company Development Fees and Expenses (as such terms are defined in the Bond Resolution), (ii) costs incurred in connection with the issuance of the Series 2010 Bonds, (iii) costs incurred or to be incurred in connection with the design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects for the Series 2010 Local Units, (iv) costs incurred or to be incurred in connection with the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects for the Series 2010 Local Units, if any, (v) capitalized interest and/or reserves, if any, and (vi) such other amounts as shall be set forth in the Bond Resolution (collectively, the “*Series 2010 Project*”);

**WHEREAS**, the Series 2010 Bonds, and any Additional Bonds defined under the Bond Resolution (collectively, the “*Bonds*”) shall be issued pursuant to the terms of that certain “RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY OF SOMERSET GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE NOTES AND BONDS, SERIES 2010 AND ADDITIONAL BONDS OF THE SOMERSET COUNTY

IMPROVEMENT AUTHORITY” to be adopted by the governing body of the Authority, 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 (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-77 of the Act, N.J.S.A. 40A:65-4 of the Uniform Shared Services and Consolidation Act (as amended and supplemented from time to time, the “*Shared Services Act*”) and other applicable law, upon or prior to the issuance of the Series 2010 Bonds, the Authority shall have entered into a “License and Access Agreement (Somerset County Renewable Energy Program, Series 2010)” to be dated as of the first day of the month of issuance of the Series 2010A Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, each agreement shall constitute a “*Local Unit License Agreement*”, and collectively, the “*Local Unit License Agreements*”) with each Series 2010 Local Unit that would, among other things, provide the Authority and/or its assignees the right and obligation to (i) access the Local Unit Facilities of each such Series 2010 Local Unit, most particularly their roofs and electrical systems (the “*Local Unit License*”), (ii) finance, design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects on, in, affixed or adjacent to, or for the benefit of such Local Unit Facilities, (iii) finance, design, permit, acquire, construct, renovate, and install, the Capital Improvement Projects, if any, on, in, affixed or adjacent to, or for the benefit of such Local Unit Facilities, (iv) receive the right to the renewable energy produced from the Renewable Energy Projects financed by the Series 2010 Bonds, and (v) sell all or a portion of the renewable energy produced from such Renewable Energy Projects through the Authority to the respective Series 2010 Local Units, pursuant to an assignment (under each Local Unit License Agreement) from the Authority to the Series 2010 Local Units of the Power Purchase Agreement (as hereinafter defined), the terms of which Power Purchase Agreement could be entered into directly by the Series 2010 Local Units under N.J.S.A. 40A:11-15(45) of the Local Public Contracts Law (for the municipality/County Series 2010 Local Unit) and under N.J.S.A. 18A:18A-42(o) of the Public Schools Contracts Law (for the board of education Series 2010 Local Units);

**WHEREAS**, upon or prior to the issuance of the Series 2010A Bonds, and in accordance with (i) N.J.S.A. 40A:11-4.1(k) of the Local Public Contracts Law, (ii) Local Finance Board Notice 2008-20, December 3, 2008, *Contracting for Renewable Energy Services*, (iii) the Board of Public Utilities (“*BPU*”) protocol for measuring energy savings in PPA agreements dated February 20, 2009 (*Public Entity Energy Efficiency and Renewable Energy Cost Savings Guidelines*), (iv) Local Finance Board Notice 2009-10 dated June 12, 2009, *Contracting for Renewable Energy Services: Update on Power Purchase Agreements*, and (v) all other applicable law, and pursuant to a competitive contracting process governed thereby, which shall include that certain “REQUEST FOR PROPOSALS FOR A DEVELOPER OF PHOTOVOLTAIC SYSTEMS WITH RESPECT TO CERTAIN LOCAL GOVERNMENT FACILITIES IN THE COUNTY OF SOMERSET, NEW JERSEY” dated July 30, 2010 and issued by the Authority seeking proposals from prospective solar developers (as the same may be amended or supplemented, the “*Company RFP*”) and the receipt of proposals from prospective solar



developers, including that proposal (the “*Company Proposal*”) of the successful respondent (the “*Company*”), the Authority shall select the Company to (y) design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects and (z) design, permit, acquire, construct, renovate, and install the Capital Improvement Projects, if any, in both cases for the designated Local Unit Facilities of such Series 2010 Local Units, with such Program terms to be set forth in the following Company Documents to be entered into between the Company and, at a minimum, the Authority, or acknowledged by the Company, as applicable:

- (a) Pursuant to N.J.S.A. 40:37A-78 of the Act, a “Lease Purchase Agreement (Somerset County Renewable Energy Program, Series 2010)” to be dated as of the first day of the month of issuance of the Series 2010A Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the “*Company Lease Agreement*”) between the Authority, as owner and lessor, and the Company, as lessee, (I) conveying to the Company a leasehold interest in and to the Renewable Energy Projects, (II) assigning to the Company a license of the necessary portion of each Series 2010 Local Units’ Local Unit Facilities (obtained by the Authority through the Local Unit License Agreements) in order for the Company to design, permit, acquire, construct, install, operate and maintain the Renewable Energy Projects, and to design, permit, acquire, construct, renovate, and install the Capital Improvement Projects, if any, in both cases, for such Series 2010 Local Units, and (III) obligating the Company to operate and maintain, or cause the operation and maintenance of, the Renewable Energy Projects for the Series 2010 Local Units;
  
- (b) That certain “Power Purchase Agreement (Somerset County Renewable Energy Program, Series 2010)” to be dated as of the first day of the month of issuance of the Series 2010A Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the “*Power Purchase Agreement*”) authorized pursuant to N.J.S.A. 40:37A-77 and -78 of the Act, N.J.S.A. 40A:65-4 of the Shared Services Act, N.J.S.A. 40A:11-15(45) of the Local Public Contracts Law (regarding that portion to be assigned to the municipal/County Series 2010 Local Unit under the applicable Local Unit License Agreement), N.J.S.A. 18A:18A-42(o) of the Public Schools Contracts Law (regarding that portion to be assigned to the board of education Series 2010 Local Units under the applicable Local Unit License Agreements) and the guidelines applicable to such contracts promulgated by the State Board of Public Utilities (the “*BPU*”), whereby, among other things,
  - (I) The Company shall establish a power purchase price based, in part, on the Authority’s covenant in the Company Lease Agreement to issue the Series 2010 Bonds to finance the Renewable Energy Projects, and if

applicable, the Capital Improvement Projects, if any, for the Series 2010 Local Units, and the Company shall be entitled to draw a dedicated portion of the net proceeds of the Series 2010 Bonds for the design, permitting, acquisition construction, renovation, and installation of such Projects on a requisition basis,

(II) The Company shall establish a power purchase price based, in part, on the Authority's covenant in the Company Lease Agreement, as nominal owner of the Renewable Energy Projects for State law purposes, to assign to the Company all or a portion of the Authority's rights to the Solar Renewable Energy Certificates ("SRECs") generated by the Renewable Energy Projects for the Series 2010 Local Units, and

(III) The Company shall sell to the Authority for the benefit of the Series 2010 Local Units, for a term of fifteen (15) years, plus extensions if applicable, for a fixed power purchase price per kilowatt hour, as escalated under the terms thereof (such terms to be established pursuant to the Company Proposal), the renewable energy generated by the Renewable Energy Projects, which Authority obligation to purchase shall be assigned to the Series 2010 Local Units as part of the Local Unit License Agreements; and

- (c) The Company Lease Agreement, the Power Purchase Agreement, the hereinafter defined Company Disclosure Agreement, and the hereinafter defined Company Pledge Agreement, may be collectively defined as the "*Company Documents*";

**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) Basic Lease Payments to be made by the Company under, and as defined in, the Company Lease Agreement, (ii) certain Additional Lease Payments to be made by the Company under, and as defined in, the Company Lease Agreement, which Additional Lease Payments shall be attributable to (a) the Purchase Option Price payable in accordance with Section 701 of the Company Lease Agreement upon any optional redemption of the Series 2010 Bonds or (b) the Mandatory Purchase Price payable in accordance with Section 702 of the Company Lease Agreement upon any acceleration of the Series 2010 Bonds, and (iii) payments by the County under the hereinafter defined County Guaranty to the extent other funds (including the Basic Lease Payments) are not available to make the Series 2010 Bond debt service payments on time and in full, all in accordance with the terms of the Bond Resolution;

**WHEREAS**, the payment of the principal (including mandatory sinking fund installments, if any) in an aggregate principal amount not to exceed \$55,000,000 of, and interest (at interest rates not to exceed the maximum rates set forth in the Local Finance Board Application) on the Series 2010 Bonds, but not any redemption premium, shall be fully, unconditionally and irrevocably guaranteed in accordance with (i) the terms of a guaranty ordinance of the County to be finally adopted by the Board of Freeholders, (ii) by a guaranty certificate to be executed by an authorized officer of the County within each Series 2010 Bond and (iii) a “County Guaranty Agreement (Somerset County Renewable Energy Program, Series 2010)” to be dated as of the first day of the month of issuance of the Series 2010A Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*County Guaranty Agreement*”) by and between the County and the Authority, as acknowledged by the Company and the Credit Facility Provider (as hereinafter defined) setting forth, among other things, the County’s obligation to make any such guaranty payments in accordance with and within the parameters set forth in the guaranty ordinance and the Bond Resolution (collectively, the “*County Guaranty*”), all pursuant to Section 37 (“*Section 37*”) of the Act (N.J.S.A. 40:37A-80);

**WHEREAS**, the holders of any Additional Bonds issued under the terms of the Bond Resolution, the Act and all other applicable law shall also be entitled to the pledge of the Trust Estate under the Bond Resolution on a pro-rata basis with the holders of any Outstanding Bonds as defined therein, including the Series 2010 Bonds;

**WHEREAS**, under the County Guaranty Agreement, the Company RFP, and as applicable, the Company Proposal, the Authority shall be obligated to obtain a letter of credit, cash, a covenant to provide same, or other form of security acceptable to and issued for the benefit of the County (the “*County Security*”) to be issued by a sufficiently rated banking or other financial institution, or if the County Security is provided in the form of immediately available funds or the right to same, then the Company (in any such case, the “*County Security Provider*”), all to secure, in part, the County’s payment obligations under the County Guaranty (but not to secure the payment of debt service on the Series 2010 Bonds, as any such County Security shall be deposited in the County Security Fund under the Bond Resolution, which Fund shall not be a part of the Trust Estate pledged for the payment of the Series 2010 Bonds), the terms of which County Security shall be set forth in a letter of credit and reimbursement or other agreement to be dated the first day of the month of issuance of the applicable series of Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the “*County Security Agreement*”) among the Company, the County Security Provider, and the Authority, and acknowledged by the County, the provisions of which County Security Agreement, to the extent the County Security is in the form of immediately available funds or the right to same deposited in the County Security Fund created under the Bond Resolution, shall (i) not be set forth in an independent County Security Agreement, and accordingly (ii) be set forth in the Bond Resolution, the County Guaranty Agreement and the Company Lease Agreement;

**WHEREAS**, should the Company fail to make its Basic Lease Payments on time and in

full, thereby causing the County to make payments to the Series 2010 Bondholders under the County Guaranty, which in turn causes the County Security to be drawn upon to reimburse the County for all or a portion of any such County Guaranty repayments, (i) the County Security Agreement, if any, shall provide that the Authority assign and pledge the Reimbursement Collateral (as defined in the Bond Resolution) to the County Security Provider, as reimbursement security for any such draw on the County Security, or (ii) to the extent the County Security is in the form of immediately available funds or the right to same deposited in the County Security Fund created under the Bond Resolution, in which case no County Security Agreement shall exist, then the Company, as County Security Provider in such instance, shall only be entitled to such excess County Security, as Reimbursement Collateral, if any shall remain available, after and to the extent the County has been fully reimbursed for payments made by the County under its County Guaranty;

**WHEREAS**, the Authority, with the consent of the County, may, depending on the Company Proposal, determine to initially accept as County Security, in lieu of a County Security Agreement, immediately available funds in such amount (defined under the Bond Resolution as the County Security Fund Requirement) as set forth in the Company Proposal, to be funded by the Company in accordance with the terms of the Company Lease Agreement, all as contemplated by the Company Proposal, and all to secure, in part, the County's payment obligations under its County Guaranty should such County Guaranty ever be drawn upon, and which County Security Fund Requirement monies would then be deposited by the Trustee in the County Security Fund created and defined in the Bond Resolution, and which County Security Fund would be specifically excepted from the pledge of the Trust Estate and would not be available to secure the payment of debt service on the Series 2010 Bonds;

**WHEREAS**, in the event the Company provides the County Security Fund Requirement through such a covenant to provide immediately available funds, the Authority may require the Company to further secure its obligation to fund the County Security Fund in the amount of the County Security Fund Requirement by pledging certain property interests of the Company and its managing member's interest in and to the Company to the Trustee, all as shall be set forth in the Company Lease Agreement and that certain "Pledge and Security Agreement (Somerset County Renewable Energy Program, Series 2010)" to be dated as of the first day of the month of issuance of the Series 2010A Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the "*Company Pledge Agreement*"), and issued by the managing member of the Company, in favor of the Trustee, and acknowledged and accepted by the Company;

**WHEREAS**, the Company as a potential "materially obligated person" within the meaning and for the purposes set forth in Rule 15c2-12 ("*Rule 15c-12*") promulgated by the Securities and Exchange Commission pursuant to the Securities and Exchange Act of 1934, as amended, may be required to enter into that certain "Company Continuing Disclosure Agreement (Somerset County Renewable Energy Program, Series 2010)" to be dated as of the first day of the month of issuance of the Series 2010A Bonds (as the same may be amended and supplemented from time to time in accordance with its terms, the "*Company Continuing Disclosure*

*Agreement*”) with the Authority and the Trustee, as dissemination agent (the “*Dissemination Agent*”) in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

**WHEREAS**, pursuant to the terms of the Bond Resolution, as a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, the County will be required to enter into that certain “County Continuing Disclosure Agreement (Somerset County Renewable Energy Program, Series 2010)” dated as of February 1, 2010 (as the same may be amended and supplemented from time to time in accordance with its terms, the “*County Continuing Disclosure Agreement*” and together with the Company Continuing Disclosure Agreement, the “*Continuing Disclosure Agreements*”) with the Dissemination Agent in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

**WHEREAS**, pursuant to the terms of the Bond Resolution and/or the Continuing Disclosure Agreements, the Authority shall (i) not be considered a “materially obligated person” within the meaning and for the purposes set forth in Rule 15c2-12, and (ii) be required to provide certain material events notices in accordance with Rule 15c2-12, and accordingly, the Authority shall be required to provide such material events notices under the terms of the Company Continuing Disclosure Agreement and the County Continuing Disclosure Agreement, all in order to satisfy the secondary market disclosure requirements of Rule 15c2-12;

**WHEREAS**, prior to the issuance of the Series 2010A Bonds and in accordance with N.J.S.A. 40A:5A-6, 7 and 8 of the Local Authorities Fiscal Control Law, the Authority shall have made an application (the “*Local Finance Board Application*”) to, and seek, obtain, and officially recognize the findings from, the Local Finance Board (the “*Local Finance Board*”) in the Department of Local Government Services of the State Department of Community Affairs;

**WHEREAS**, in order to market and sell the Series 2010A Bonds, the Authority shall determine to either (i) privately place the Series 2010A Bonds with any of the County, the State or State affiliate, or other third party, either directly, or through a private placement agent (“*Private Placement Agent*”), or (ii) alternatively, by negotiated or competitive sale, publicly offer the Series 2010A Bonds, in which public offering case the Authority shall need to:

- (a) Authorize the distribution of a preliminary official statement “deemed final” within the meaning and for the purposes of Rule 15c2-12 describing the terms of the Series 2010A Bonds, the Series 2010 Project and the other transactions contemplated hereby (the “*Preliminary Official Statement*”);
- (b) If the Series 2010A Bonds shall be sold by:
  - (I) Competitive sale, authorize the distribution of a notice of sale (“*Notice of Sale*”), pursuant to which the Authority shall select an underwriter to purchase all of the Series 2010A Bonds (the “*Underwriter*”), or

- (II) Negotiated sale, enter into a bond purchase agreement (the “*Bond Purchase Agreement*”) with an underwriter to be selected by the Authority through a fair and open process (alternatively, the “*Underwriter*”) to purchase all of the Series 2010A Bonds; and
- (c) Execute and deliver a final Official Statement incorporating the terms of the sale of the Series 2010A Bonds and certain other information into the Preliminary Official Statement (the “*Official Statement*”, and together with the Preliminary Official Statement, the Notice of Sale or the Bond Purchase Agreement, as applicable, and any of the same or other offering or sale documents that may be required by any Private Placement Agent or direct purchaser under the private sale methodology in clause (i) above, the “*Sale Documents*”);

**WHEREAS**, as the Authority contemplates a private placement of the Series 2010B Bonds directly with the County, the Authority may, but shall not be required to, utilize any Sale Document or Underwriter with respect to the Series 2010B Bonds; and

**WHEREAS**, prior to the issuance of the Series 2010A Bonds and in accordance with Section 13 (“*Section 13*”) of the Act (N.J.S.A. 40:37A-56), the Authority shall have made a detailed report regarding the Renewable Energy Program to the Board of Freeholders, which report shall include, without limitation, descriptions of the Service Agreement, the Series 2010 Bonds, the Bond Resolution, the Company Lease Agreement, the County Guaranty (including the County Guaranty Agreement), the Power Purchase Agreement, the Company Pledge Agreement, the Continuing Disclosure Agreements, the Local Unit License Agreements, and if and as applicable, the Sale Documents (collectively, the “*Program Documents*”), and which report and amended report shall be accepted by the County by resolution adopted by the Board of Freeholders pursuant to Section 13.

**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 101. 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**  
**Additional Bonds**  
**Authority**  
**Board of Freeholders**  
**Bond Resolution**  
**Bonds**  
**BPU**  
**Capital Improvement Projects\***  
**Code**  
**Company**  
**Company Continuing Disclosure Agreement**  
**Company Documents**  
**Company Lease Agreement**  
**Company License Agreement**  
**Consulting Energy Engineer**  
**Consulting Energy Engineering Services**  
**County**  
**County Guaranty**  
**County Guaranty Agreement**  
**County Security**  
**County Security Agreement**  
**County Security Provider**  
**County Service Agreement**  
**Local Units**  
**Local Unit Facilities\***  
**Local Unit License**  
**Local Unit License Agreement**

**Local Unit License Agreements**  
**Power Purchase Agreement**  
**Preliminary Program Costs**  
**Program Documents**  
**Projects\***  
**Renewable Energy Program**  
**Renewable Energy Projects\***  
**Series 2010 Bonds**  
**Series 2010A Bonds**  
**Series 2010B Bonds**  
**Series 2010 Local Unit\***  
**Series 2010 Local Units**  
**Shared Services Act**  
**SRECs**  
**State**

\*as such defined terms may be amended or supplemented pursuant to Section 4.6 of the Power Purchase Agreement.

(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**  
**Completion Conditions**  
**Cost**  
**County Continuing Disclosure Agreement**  
**County Security Fund**  
**County Security Fund Requirement**  
**Fund**  
**Investment Securities**  
**Net Substitute Power Purchase Price**  
**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 the Company Lease Agreement, other than Basic Lease Payments, including without limitation, (i) Administrative Expenses not otherwise provided from a portion of the proceeds of the Bonds, including the second and succeeding Bond Year Administrative Fee, (ii) interest on any past due Lease Payments payable at the Overdue Rate (but not any such past due Basic Lease Payment), (iii) the Purchase Option Price in accordance with Section 701 of the Company Lease Agreement, and (iv) the Mandatory Purchase Price in accordance with Section 702 of the Company Lease Agreement.

“**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 Series 2010 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 Series 2010 Local Units, or engaged by the Series 2010 Local Units directly, the fees and expenses of the Architects engaged by the Authority on behalf of certain Series 2010 Local Units, or engaged by the Series 2010 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 Series 2010 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 Series 2010 Local Unit, such Administrative Expense shall be paid by such Series 2010 Local Unit upon presentation of an invoice for payment.

“**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 for the first Bond Year upon initial issuance thereof, the Authority’s fee for the Renewable Energy Program in the amount of

\$120,000, consisting of the sum of (a) \$100,000 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 and (b) \$20,000 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; plus

(ii) For all Bond Years with respect to the Series 2010 Bonds thereafter (commencing May 15, 2012), a sum of money payable by the Company as an Additional Lease Payment for deposit by the Trustee in the Administrative Expense Account of the Administrative Fund payable on the Basic Lease Payment Date immediately preceding the first day of any such Bond Year, equal to \$20,000, which amount may be referred to as the Authority's annual Administrative Fee; plus

(iii) For all Bond Years with respect to the Series 2010 Bonds commencing May 15, [2021] and thereafter, a sum or sums of money, if any, payable by the Company as an Additional Lease Payment for deposit by the Trustee in the Administrative Expense Account of the Administrative Fund as required pursuant to Section 6.3(c) of the Power Purchase Agreement, whereupon the Authority may direct the Trustee to transfer all or a portion of such funds to the Debt Service Fund or such other Fund or account under the Bond Resolution, all as set forth in a Certificate of an Authorized Officer of the Authority, which transfer, if so determined in any such Certificate, may result in a credit to all or a portion of the Power Purchase Price Payments of the Series 2010 Local Units at the times and in the amounts as may be set forth in any such Certificate; plus

(iv) For all Bond Years with respect to the Series 2010 Bonds, a sum of money, if any, payable by the Company as an Additional Lease Payment for deposit by the Trustee in the Administrative Expense Account of the Administrative Fund payable on the last day of each such Bond Year, equal to the following:

(a) If and only if the Company determines for some good and valuable business purpose, including without limitation impending negotiations with the Authority or any other Renewable Energy Program Interested Party regarding any provision of the Program Documents, whether required for negotiation or otherwise, to allocate to the Authority or some other Renewable Energy Program Interested Party some portion of the amount realized or to be realized by or on behalf of the Company pursuant to Section 6.3(b) of the Power Purchase Agreement during any such Bond Year, the amount of such contribution, if any; 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); plus

(vi) For all Bond Years with respect to any Series of Additional Bonds, such amounts as may be set forth in a Supplemental Resolution, including without limitation, for any Series of Additional Bonds that refund the Series 2010 Bonds or any other Series of Outstanding Bonds, a financing fee payable upon the issuance of any such Series of Additional Bonds (from the proceeds thereof, from the Company, or otherwise) in the amount of two percent (2%) of the aggregate principal amount of any such Series of Additional Bonds, or such different amount as shall be agreed to by the Company and the Authority, plus all reasonable Administrative Expenses of the Authority and any other Renewable Energy Program Interested Party involved in any such refunding, plus an annual financing fee of one percent (1%) of the aggregate principal amount of any such Series of Additional Bonds Outstanding and payable by the Company as of the first day of each Bond Year until final maturity (stated or otherwise) thereof, except as such amounts may be modified in any such Supplemental Resolution authorizing the issuance of any such Series of Additional Bonds.

“**Applicable**” shall mean (i) with reference to any Series 2010 Local Unit, the Series 2010 Local Unit intended to be benefited or obligated thereby, (ii) with reference to any Renewable Energy Project, the Renewable Energy Project for the intended Series 2010 Local Unit, (iii) with reference to any Local Unit Facilities, the Local Unit Facilities for the intended Series 2010 Local Unit, and (iv) with reference to any Local Unit License Agreement, the Local Unit License Agreement executed for the benefit of the intended Series 2010 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 Series 2010 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 Series 2010 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 Series 2010 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 Series 2010 Local Unit: the person designated as an Authorized Officer in the Local Unit License Agreement of any such Series 2010 Local Unit or any other person or persons who shall be authorized to act on behalf of such Series 2010 Local

Unit by virtue of a resolution of the governing body of such Series 2010 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**” shall mean the rate of interest established by the Trustee from time to time as its reference rate in making loans but does not reflect the rate of interest charged to any particular class of borrowers, and is not tied to any external rate of interest or index. The applicable rate will change automatically and immediately as of the date the Trustee changes its Base Rate, without notice to any party. If no other rate shall be so established by the Trustee, the Base Rate shall be the Trustee’s prime rate as determined from time to time.

“**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 the Company Lease Agreement for such date, less other amounts available under the Bond Resolution, if any, to make the payment on time and in full of the principal of (including Sinking Fund Installments), and interest on the Outstanding Bonds on the next occurring Principal Payment Date and Interest Payment Date respectively, of the Outstanding Bonds, including without limitation the credits available under (i) Section 302(a)(i) and (ii) of the Company Lease Agreement with respect to Power Purchase Price Payments made by the Series 2010 Local Units, (ii) Section 310(b) of the Company Lease Agreement with respect to investment earnings and certain other Revenue Fund transfers, (iii) Section 510(e)(i)(B) of the Company Lease Agreement with respect to excess amounts in the Project Fund, (iv) Section 5.07(3)(a) of the Bond Resolution regarding the transfer of funds from the County Security Fund to the Aged Account of the Revenue Fund, (v) Section 701 of the Company Lease Agreement with respect to prepayments (provided that there is no additional credit to the extent of that portion of the partial prepayment, if any, funded from the County Security Fund transfer contemplated in clause (iv) above in order to avoid the same funds being double counted), (vi) Section 3.7(a)(iv)(A) of the Local Unit License Agreements for each Series 2010 Local Unit upon the revocation of their Local Unit License, or (vii) Section 802(c) of the Company Lease

Agreement with respect to certain application of the Net Proceeds of any insurance or condemnation award.

“**Basic Lease Payment Date**” shall mean any date set forth in Exhibit A-3 to the Company Lease Agreement and designated as a Basic Lease Payment Date, which for the Interest Portion (December 15 and June 15, commencing December 15, 2011) and Principal Portion (December 15, commencing December 15, 2011) of any Basic Lease Payment, shall be a day five (5) months prior to any regularly scheduled Interest Payment Date and any regularly scheduled Principal Payment Date, respectively, or if either of such days is not a Business Day, the first Business Day prior to such date.

“**Bond Counsel**” shall mean Inglesino, Pearlman, Wyciskala & Taylor, LLC, or any other attorney at law, or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exclusion of interest on bonds or other obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state.

“**Bond Year**” shall mean (i) with respect to any Series of Outstanding Bonds, including the Series 2010 Bonds, a period of 12 consecutive months beginning on May 15 of any calendar year and ending on May 14 of the immediately succeeding calendar year except that (ii) the first Bond Year with respect to the Series 2010 Bonds shall be a period commencing on the date of issuance of the Series 2010 Bonds and ending on May 14, 2012 and (iii) the first Bond Year with respect to any other Series of Bonds shall be a period commencing on the date of issuance of such Series of Bonds and ending on the succeeding 14<sup>th</sup> day of May.

“**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 Bonds of any Series, 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 Series 2010 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 Series 2010 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 Series 2010 Local Unit, in the form attached as **Exhibit B-2** to the Company Lease Agreement, executed by an Authorized Officer of the Company, acknowledged by an Authorized Officer of the Applicable Series 2010

Local Unit, and acknowledged as to form only by an Authorized Officer of the Authority, evidencing, among other things, that all of the Capital Improvement Projects for each such Series 2010 Local Unit has been completed in accordance with the Plans and Specifications therefore, and has been accepted by such Series 2010 Local Unit.

“**CIP Acceptance State**” shall mean the good working order condition of the Capital Improvement Projects for the Series 2010 Local Units, at the time of the authorization, execution and delivery of, and as certified and acknowledged by such Applicable Series 2010 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, 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.

“**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 Series 2010 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 Series 2010 Local Unit, or the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects by the Lessee for any Series 2010 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 Series 2010 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 Series 2010 Local Units.

“**Development Contract**” shall mean (i) in the case of the Company, the Company Lease Agreement, (ii) in the case of \_\_\_\_\_, as Contractor, that certain “Turnkey Design, Engineering, Procurement and Construction Contract” between the Company and such Contractor with respect to the Projects, and (iii) 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 Series 2010 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 Series 2010 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 Series 2010 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 Series 2010 Local Units.

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

“**Event of Default**” shall have the meaning ascribed to such term in Section 1001 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 Series 2010 Local Unit and/or the Lessor, with respect to the interconnection of the completed Renewable Energy Projects for such Series 2010 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, the date on which interest on the Bonds, including the Series 2010 Bonds, is required to be paid to the Holders thereof, (i) being the fifteenth (15<sup>th</sup>) day of each May and November until final maturity of the Bonds, including the Series 2010 Bonds, commencing May 15, 2012, each of which shall constitute a regularly scheduled Interest Payment Date, or the date of (ii) redemption or (iii) acceleration of the Bonds, including 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 on the Outstanding Bonds, including the Series 2010 Bonds, on the immediately succeeding Interest Payment Date, as set forth in **Exhibit A-3** to the Company Lease Agreement, less other amounts available under the Bond Resolution, if any, to make the payment on time and in full of the interest on the Bonds on the next occurring Interest Payment Date of the Bonds, including without limitation the credits available under (i) Section 302(a)(i) of the Company Lease Agreement with respect to Power Purchase Price Payments made by the Series 2010 Local Units, (ii) Section 310(b) of the Company Lease Agreement with respect to investment earnings and certain other Revenue Fund transfers, (iii) Section 510(e)(i)(B) of the Company Lease Agreement with respect to excess amounts in the

Project Fund, (iv) Section 5.07(3)(a) of the Bond Resolution regarding the transfer of funds from the County Security Fund to the Aged Account of the Revenue Fund, (v) Section 701(a) of the Company Lease Agreement with respect to partial prepayments (provided that there is no additional credit to the extent of that portion of the partial prepayment, if any, funded from the County Security Fund transfer contemplated in clause (iv) above in order to avoid the same funds being double counted), (vi) Section 3.7(a)(iv)(A) of the Local Unit License Agreements for each Series 2010 Local Unit upon the revocation of their Local Unit License, or (vii) Section 802(c) of the Company Lease Agreement with respect to certain application of the Net Proceeds of any insurance or condemnation award.

“**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 402 hereof.

“**Leased Property**” shall mean the Renewable Energy Projects, as set forth in **Exhibit A-3** to the Company Lease Agreement and in Exhibit B to the respective Local Unit License Agreements for the Series 2010 Local Units, together with all properties, rights, duties and obligations related thereto, including without limitation the SRECs and the right to electricity generated from such Renewable Energy Projects, as all such property shall be nominally owned by the Authority and leased by the Authority, as lessor, to the Company, as lessee, pursuant to Section 3.1 of the Company Lease Agreement for the Lease Term, with the express intent that such lease shall convey ownership of such property for purposes of the Code to the Company. The Leased Property shall not include the Capital Improvement Projects of the Series 2010 Local Units, all of which shall be owned by the respective Series 2010 Local Units.

“**Mandatory Purchase Price**” shall have the meaning ascribed to such term in Section 702 of the Company Lease Agreement relating to the acceleration of the Bonds of any Series, including the Series 2010 Bonds.

“**Maximum Gross Bond Funded Project Cost Amount**” shall mean the sum of (i) the Maximum Net Bond Funded Project Cost Amount funded by the Lessee with a portion of the proceeds of the Series 2010 Bonds and deposited with the Trustee in the Project Fund upon initial issuance thereof, together with (ii) any interest earned thereon prior to disbursement from the Project Fund in accordance with the Company Lease Agreement and the Bond Resolution, which amount has been estimated by the Lessee to 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 Project Costs, in either case for all of the Series 2010 Local Units on, in or about their Local Unit Facilities and in accordance with the Plans and Specifications.



“**Maximum Net Bond Funded Project Cost Amount**” shall mean \$ \_\_\_\_\_, the amount 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 to fund a portion of the Project Costs.

“**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, which rate will change automatically and immediately as of the date the Trustee changes its Base Rate, without notice to any Renewable Energy Program Interested Parties; *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 taxes and assessments not then delinquent with respect to the Leased Property, (ii) the Company Lease Agreement and the other Program Documents, (iii) the pledge and assignment by the Lessor of the Reimbursement Collateral to the County Security Provider under the County Security Agreement, if any, subject to the prior pledge thereof to the County under the County Guaranty Agreement, which prior pledge shall supersede the pledge to the County Security Provider only to the extent the County shall fail to have been reimbursed in full for all payments made by the County under the County Guaranty from the County Security Provider through a draw under the County Security, (iv) the pledge of the Trust Estate by the Lessor to the Trustee under the Bond Resolution, and (v) any mechanic’s, laborer’s, materialmen’s, supplier’s or vendor’s lien or right not filed or perfected in the manner prescribed by law, other than any lien arising through a manufacturer or supplier of the Leased Property.

“**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 Series 2010 Local Unit pursuant to Section 501 of the Company Lease Agreement.

“**Power Purchase Price Payments**” shall mean the payments made by the respective Series 2010 Local Units for the purchase of electricity to the Trustee, on behalf of the Lessee, all in accordance with Section 5.1(c)(i) of the Local Unit License Agreements.

**“Principal Payment Date”** shall mean, the date on which principal (including Sinking Fund Installments, if any) of the Bonds, including the Series 2010 Bonds, is required to be paid to the Holders thereof, (i) being the fifteenth (15<sup>th</sup>) day of each May until final maturity of the Series 2010 Bonds, commencing May 15, 2012, each of which shall constitute a regularly scheduled Principal Payment Date, or the date of (ii) redemption or (iii) acceleration of the Bonds, including the Series 2010 Bonds.

**“Principal Portion”** shall mean, with respect to Basic Lease Payments due on any Basic Lease Payment Date, the principal (including Sinking Fund Installments) of the Outstanding Bonds, including the Series 2010 Bonds, due and owing on the immediately succeeding Principal Payment Date, as set forth in **Exhibit A-3** attached to the Company Lease Agreement, less other amounts available under the Bond Resolution, if any, to make the payment on time and in full of the principal of (including Sinking Fund Installments) the Bonds on the next occurring Principal Payment Date of the Bonds, including without limitation the credits available under (i) Section 302(a)(ii) of the Company Lease Agreement with respect to Power Purchase Price Payments made by the Series 2010 Local Units, (ii) Section 310(b) of the Company Lease Agreement with respect to investment earnings and certain other Revenue Fund transfers, (iii) Section 510(e)(i)(B) of the Company Lease Agreement with respect to excess amounts in the Project Fund, (iv) Section 5.07(3)(a) of the Bond Resolution regarding the transfer of funds from the County Security Fund to the Aged Account of the Revenue Fund, (v) Section 701(a) of the Company Lease Agreement with respect to partial prepayments (provided that there is no additional credit to the extent of that portion of the partial prepayment, if any, funded from the County Security Fund transfer contemplated in clause (iv) above in order to avoid the same funds being double counted), (vi) Section 3.7(a)(iv)(A) of the Local Unit License Agreements for each Series 2010 Local Unit upon the revocation of their Local Unit License, or (vii) Section 802(c) of the Company Lease Agreement with respect to certain application of the Net Proceeds of any insurance or condemnation award.

**“Purchase Option Price”** shall have the meaning ascribed to such term in Section 701 of the Company Lease Agreement relating to the optional redemption of the Bonds of any Series, including the Series 2010 Bonds.

**“Reimbursement Collateral”** shall mean, to the extent a County Security Agreement shall be delivered to the Lessor and the Trustee in accordance with the provisions of Section 5.07(6) of the Bond Resolution, (i) the SRECs, (ii) the Net Substitute Power Purchase Price, and (iii) any past due Basic Lease Payments, together with any Additional Lease Payments constituting interest payable on such past due Basic Lease Payments at the Overdue Rate, all of which shall have been pledged and assigned by the Lessor to the County Security Provider under the County Security Agreement, subject to the prior pledge thereof to the County under the County Guaranty Agreement, which prior pledge shall supersede the pledge to the County Security Provider only to the extent the County shall fail to have been reimbursed in full for all payments made by the County under the County Guaranty from the County Security Provider through a draw under the County Security. If no County Security Agreement shall be so

delivered, this term shall mean such portion of the monies and securities on deposit in the County Security Fund at any time, if any, that shall be available to the Lessee, in such case as County Security Provider, after and to the extent the County has been fully paid under its County Guaranty; provided that no such monies shall be made available to the Lessee until the County has completed all of its payment obligations under the County Guaranty and been fully reimbursed therefor, from the County Security Fund or otherwise.

“**REP Acceptance Certificates**” shall mean the certificates, one for each Series 2010 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 Series 2010 Local Unit, in the form attached as **Exhibit B-1** to the Company Lease Agreement, executed by an Authorized Officer of the Company, acknowledged by an Authorized Officer of the Applicable Series 2010 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 Series 2010 Local Unit has been completed in accordance with the Plans and Specifications therefore, and has been accepted by the Company and the Series 2010 Local Unit, and determining any matters regarding the application of excess funds in accordance with Section 5.02 of the Bond Resolution.

“**Reserved Rights**” shall mean the Authority’s right to retain the following under the Company Lease Agreement, which shall not be part of the Trust Estate pledged to the Trustee under Section 1.04 of the Bond Resolution:

(i) Receive the Additional Lease Payments earmarked for purposes other than the Purchase Option Price or the Mandatory Purchase Price (which Purchase Option Price or the Mandatory Purchase Price Additional Lease Payments constitute part of the Trust Estate, and are therefore not reserved to the Authority), including without limitation (a) the Administrative Fee, if any, and any other Administrative Expenses, which the Authority shall be obligated to pay or cause to be paid to the Renewable Energy Program Interested Parties due such Administrative Expenses, and (b) interest payable on past due Lease Payments at the Overdue Rate (but not the Basic Lease Payments that may be paid together with any payment at the Overdue Rate, which Basic Lease Payments constitute part of the Trust Estate, and are therefore not reserved to the Authority), provided, further, that the portion of which interest that is attributable to past due Basic Lease Payments may be assigned by the Authority to the County and/or the County Security Provider as part of the Reimbursement Collateral;

(ii) The payments set forth in Section 5.2(a)(ii) and (iii) of the Local Unit License Agreements for the Series 2010 Local Units that reflect the difference between the Gross Substitute Power Purchase Price and the Net Substitute Power Purchase Price, which includes the Administrative Fee;

(iii) Receive notices provided for in the Company Lease Agreement or any other Program Document;

(iv) Appoint, replace or remove such parties as shall be appointed, replaced or removed under the Company Lease Agreement or any other Program Document at the direction of the Authority; and

(v) The right to give or withhold consents, including consents to amendments, permitted or required of the Authority under the Company Lease Agreement or any other Program Documents, to the extent that any such consent or amendment would diminish the rights or enlarge the responsibilities or adversely affect the ability of the Authority to realize or perform same, respectively, or which would increase the Authority's potential liability or exposure to any party to any Program Document or to any third party as a result thereof. All such notices, appointments or consents under any other Program Document (i.e., other than the Company Lease Agreement) shall be unaffected by these rights, as the Authority's rights under the other Program Documents are not subject to the pledge of the Trust Estate under Section 1.04 of the Bond Resolution, and are either retained by the Authority, or assigned pursuant to the terms of the Program Documents, but in any event, shall not constitute Revenues or other part of the Trust Estate for purposes of the Bond Resolution.

## **SECTION 102. 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 Series 2010 Local Units;

(ii) **Exhibit A-2:** Description of Capital Improvement Projects for Series 2010 Local Units;

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

(iv) **Exhibit A-4:** Notice Information for Series 2010 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:** Attach Form of Power Purchase Agreement and Company Continuing Disclosure Agreement.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES; DISCLAIMERS

#### SECTION 201. 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, (B) authorize, execute, deliver and perform its obligations under the Company Documents, and (C) accept and be bound by the terms of the other Program 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, and (z) otherwise be bound by the terms of all of the Program Documents.

(b) The Constitution and the laws of the State and the jurisdiction of the Lessee's incorporation 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 Series 2010 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, to acknowledge and consent and otherwise be bound by the terms of the other Program 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 510(e) hereof no later than \_\_\_\_\_.

(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 to be bound by the other Program 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 and the terms affecting the Lessee in the other Program 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 that would preclude the Lessee 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 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 Series 2010 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 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. The Lessee agrees to take all reasonable actions in connection with the Authority's marketing and sale of the 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 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.

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

**SECTION 202. 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 entire Renewable Energy Projects 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 Renewable Energy Projects 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 Renewable Energy Projects, all as provided in Article VII hereof.

**SECTION 203. Disclaimer of Lessor and Trustee.**

THE TRUSTEE, BY ACCEPTANCE OF THE TRUSTS SET FORTH IN THE BOND RESOLUTION, AND THE LESSOR, BY ADOPTION OF THE BOND RESOLUTION, BY ISSUANCE OF THE BONDS AND BY EXECUTION AND DELIVERY OF ALL OTHER PROGRAM DOCUMENTS, MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY PROJECT.

**SECTION 204. Tax Covenants of Lessee.**

There shall be no covenants herein arising from or otherwise relating to the issuance of the Series 2010 Bonds, as such Bonds shall not be issued as a Series of Tax-exempt Bonds.

## ARTICLE III

### LEASE PAYMENTS

#### SECTION 301. Lease Payments.

(a) The Lessee agrees to pay to the Trustee the following Lease Payments, as rent for the Leased Property for the Term hereof, in immediately available funds, no later than when due, delivered to the principal corporate trust office of, or some other designated location by, the Trustee:

(i) For deposit in the Revenue Account of the Revenue Fund, Basic Lease Payments, as set forth in Sections 305 and 306 hereof and **Exhibit A-3** hereof, on each Basic Lease Payment Date; and

(ii) For deposit in the Administrative Expense Account of the Administrative Fund, from time to time as provided herein, as Additional Lease Payments, all as set forth in Section 308 hereof:

(A) Administrative Expenses (including the Authority's annual Administrative Fee) at the times set forth in invoices to be received by the Lessee from the Trustee in accordance with the Bond Resolution, provided that no further invoice shall be required for payment of the annual Administrative Fee, which shall be due and payable in advance on the first day of any Bond Year (except that the initial Administrative Fee shall be funded from a portion of the proceeds of the Series 2010 Bonds);

(B) Interest on any overdue Lease Payments at the Overdue Rate, which amounts shall be immediately due and payable to the extent any Lease Payments are overdue;

(C) The Purchase Option Price in accordance with Section 701 of the Company Lease Agreement;

(D) The Mandatory Purchase Price in accordance with Section 702 of the Company Lease Agreement; and

(E) 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 the terms of any other Program Document.

(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 510(e)(i)(B) hereof, and for

earnings on other Funds held by the Trustee and certain other Revenue Fund transfers in accordance with Section 310(b) 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; provided, however, that such credits, if applicable, shall be applied first to the Interest Portion and then the Principal Portion of Basic Lease Payments and second to Additional Lease Payments due, if any.

(c) Notwithstanding anything to the contrary herein, the Lessee may make any and all Lease Payments in immediately available funds through wire transfer or otherwise, to the extent the Trustee or other payee consents in writing to such method of delivery.

**SECTION 302. Lease Payments to be Unconditional, Except for Power Purchase Price Payments; No Abatement or Set-Off.**

(a) Except as set forth in clauses (i) and (ii) below, 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 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.

(i) Lessee shall receive a credit against the Interest Portion of any Basic Lease Payment due and owing on any Basic Lease Payment to the extent of all Power Purchase Price Payments made by the Series 2010 Local Units and received by the Trustee since the immediately prior Basic Lease Payment Date.

(ii) Lessee shall receive a credit against the Principal Portion of any Basic Lease Payment due and owing on any Basic Lease Payment to the extent of any remaining Power Purchase Price Payments made by the Series 2010 Local Units and received by the Trustee since the immediately prior Basic Lease Payment Date, after accounting for the application of the credit set forth in clause (i) above.

(iii) For purposes of applying this credit, Power Purchase Price Payments made by the Series 2010 Local Units and received by the Trustee within ten (10) Business Days of any Basic Lease Payment Date shall be deemed to have been received by the Trustee the Business Day after such Basic Lease Payment Date (and therefore the Lessee shall not be entitled to a credit for such amounts paid by the Series 2010 Local Units until the following Basic Lease Payment Date). The Lessor shall cause the Trustee, pursuant to the terms of the Bond Resolution, to notify the Company in writing (with a copy to the Lessor) of the aggregate amount of all Power Purchase Price Payments made by the Series 2010

Local Units since the prior Basic Lease Payment Date that are available for such credit, (A) as of the date that is thirty (30) days' prior to each Basic Lease Payment Date, and (B) on the Business Day immediately following the ten (10) Business Day credit cutoff date noted above.

(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) However, nothing herein shall be construed to release the Lessor from the performance of its obligations hereunder; and if the Lessor should fail to perform any such obligation, 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 303. 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 304. Return of Renewable Energy Projects upon Termination of Company Lease Agreement; CIP Acceptance State.**

(a) To the extent this Company Lease Agreement is terminated and the Renewable Energy Projects are sold by the Lessee to the Applicable Series 2010 Local Units for

fair market value in accordance with Section 609(d) hereof, Lessee shall (i) take no action regarding the removal of any such Renewable Energy Projects from the Local Unit Facilities for such Applicable Series 2010 Local Units and (ii) expend such sums, and take all such other actions necessary to return the Capital Improvement Projects for any such Applicable Series 2010 Local Units to the CIP Acceptance State, after giving effect to the normal wear and tear thereon or thereto from that would ordinarily degrade the state of any such Capital Improvement Projects from the date of any such CIP Acceptance Certificate to the date of any such termination, the intent of this clause being for the Lessee to repair only such damage caused by or on behalf of the Lessee, including by any Contractor, to any such Capital Improvement Projects, if any, from the Lessee's operation and maintenance of such Renewable Energy Projects.

(b) To the extent this Company Lease Agreement is terminated and the Renewable Energy Projects are eligible for sale by the Lessee to the Applicable Series 2010 Local Units for fair market value in accordance with Section 609(d) hereof, but no accommodation on sale price or other terms shall be reached, and the Lessee shall accordingly be prospectively entitled to the full use and enjoyment of any such Renewable Energy Projects, the Lessee shall (i) promptly remove such Renewable Energy Projects from the Local Unit Facilities for such Applicable Series 2010 Local Units and (ii) expend such sums, and take all such other actions necessary to return the Capital Improvement Projects for any such Applicable Series 2010 Local Units to the CIP Acceptance State, after giving effect to the normal wear and tear thereon or thereto from that would ordinarily degrade the state of any such Capital Improvement Projects from the date of any such CIP Acceptance Certificate to the date of any such termination, the intent of this clause being for the Lessee to repair only such damage caused by or on behalf of the Lessee, including by any Contractor, to any such Capital Improvement Projects, if any, from either (A) the Lessee's operation and maintenance of such Renewable Energy Projects or (B) the Lessee's removal of such Renewable Energy Projects.

(c) To the extent this Company Lease Agreement is terminated and the Renewable Energy Projects are sold by the Lessor to the Applicable Series 2010 Local Units for nominal consideration in accordance with Section 609(f) hereof (after a Lessee Event of Default), Lessee shall (i) take no action regarding the removal of any such Renewable Energy Projects from the Local Unit Facilities for such Applicable Series 2010 Local Units and (ii) expend such sums, and take all such other actions necessary to return the Capital Improvement Projects for any such Applicable Series 2010 Local Units to the CIP Acceptance State, after giving effect to the normal wear and tear thereon or thereto from that would ordinarily degrade the state of any such Capital Improvement Projects from the date of any such CIP Acceptance Certificate to the date of any such termination, the intent of this clause being for the Lessee to repair only such damage caused by or on behalf of the Lessee, including by any Contractor, to any such Capital Improvement Projects, if any, from the Lessee's operation and maintenance of such Renewable Energy Projects.

**SECTION 305. Basic Lease Payments; Principal Portion.**

(a) The Principal Portion of Basic Lease Payments shall be due on each Basic

Lease Payment Date in the amount of principal due and payable on the Bonds, including the Series 2010 Bonds, on the immediately succeeding Principal Payment Date, with respect to regularly scheduled Principal Payment Dates, all as set forth on **Exhibit A-3** hereto; *provided, however*, that no Principal Portion of Basic Lease Payments shall be payable by the Lessee, or the Principal Portion of Basic Lease Payments shall be reduced, as applicable, (a) to the extent of a balance available for payment of principal on the Bonds on deposit in the Principal Account of the Debt Service Fund as of any applicable Basic Lease Payment Date, as a result of (i) a credit to the Principal Portion of Basic Lease Payments in accordance with (A) Section 302(a)(ii) hereof with respect to certain Power Purchase Price Payments made by the Series 2010 Local Units, (B) Section 310(b) hereof with respect to investment earnings and certain other Revenue Fund transfers, (C) Section 510(e)(i)(B) hereof with respect to excess amounts in the Project Fund, (D) Section 5.07(3)(a) of the Bond Resolution regarding the transfer of funds from the County Security Fund to the Aged Account of the Revenue Fund, (E) Section 701(a) of the Company Lease Agreement with respect to partial prepayments (provided that there is no additional credit to the extent of that portion of the partial prepayment, if any, funded from the County Security Fund transfer contemplated in clause (D) above in order to avoid the same funds being double counted), (F) Section 3.7(a)(iv)(A) of the Local Unit License Agreements for each Series 2010 Local Unit upon the revocation of their Local Unit License, or (G) or Section 802(c) of the Company Lease Agreement with respect to certain application of the Net Proceeds of any insurance or condemnation award or (ii) otherwise.

(b) The Lessor shall cause the Trustee, pursuant to the terms of the Bond Resolution, to notify the Company in writing (with a copy to the Lessor) of the availability of any such additional credit, where notice has not otherwise been provided for herein, in the notice that the Trustee is obligated to send to the Company (with a copy to the Lessor) regarding the investment earnings credit in accordance with Section 302(a)(iii)(B) hereof.

#### **SECTION 306. Basic Lease Payments; Interest Portion.**

(a) The Interest Portion of Basic Lease Payments shall be due on each Basic Lease Payment Date in the amount of interest due and payable on the Bonds, including the Series 2010 Bonds, on the immediately succeeding Interest Payment Date, with respect to regularly scheduled Interest Payment Dates, all as set forth on **Exhibit A-3** hereto; *provided, however*, that no Interest Portion of Basic Lease Payments shall be payable by the Lessee, or the Interest Portion of Basic Lease Payments shall be reduced, as applicable, (a) for any period to the extent interest payable on the Bonds for such period shall have been previously provided to the Trustee as capitalized interest for deposit in the Capitalized Interest Account of the Debt Service Fund from proceeds derived from the sale of the Bonds and (b) to the extent of a balance available for payment of interest on the Bonds on deposit in the Interest Account of the Debt Service Fund as of any applicable Basic Lease Payment Date, as a result of (i) a credit to the Interest Portion of Basic Lease Payments in accordance with (A) Section 302(a)(i) hereof with respect to certain Power Purchase Price Payments made by the Series 2010 Local Units, (B) Section 310(b) hereof with respect to investment earnings and certain other Revenue Fund transfers, (C) Section 510(e)(i)(B) hereof with respect to excess amounts in the Project Fund, (D) Section 5.07(3)(a) of

the Bond Resolution regarding the transfer of funds from the County Security Fund to the Aged Account of the Revenue Fund, (E) Section 701(a) of the Company Lease Agreement with respect to partial prepayments (provided that there is no additional credit to the extent of that portion of the partial prepayment, if any, funded from the County Security Fund transfer contemplated in clause (D) above in order to avoid the same funds being double counted), (F) Section 3.7(a)(iv)(A) of the Local Unit License Agreements for each Series 2010 Local Unit upon the revocation of their Local Unit License, or (G) Section 802(c) of the Company Lease Agreement with respect to certain application of the Net Proceeds of any insurance or condemnation award, or (ii) otherwise.

(b) The Lessor shall cause the Trustee, pursuant to the terms of the Bond Resolution, to notify the Company in writing (with a copy to the Lessor) of the availability of any such additional credit, where notice has not otherwise been provided for herein, in the notice that the Trustee is obligated to send to the Company (with a copy to the Lessor) regarding the investment earnings credit in accordance with Section 302(a)(iii)(B) hereof.

**SECTION 307. Interest Calculation.**

The Interest Portion of Basic Lease Payments represented by the Bonds, including the Series 2010 Bonds, shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

**SECTION 308. Additional Lease Payments.**

(a) At the times required in the definition of “Administrative Fee”, when not otherwise provided for from a portion of the proceeds of a Series of Bonds, including the Series 2010 Bonds, the Lessee shall pay the Administrative Fee to the Trustee as an Additional Lease Payment for deposit in the Administrative Expense Account of the Administrative Fund.

(b) The Lessee shall pay to the Trustee, for deposit in the Administrative Expense Account of the Administrative Fund as an Additional Lease Payment, from time to time upon the Lessee’s receipt from the Trustee of an invoice therefore in accordance with the terms of the Bond Resolution, 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 and about 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 1007 hereof.

(d) The Lessee shall immediately pay to the Trustee, as an Additional Lease Payment, the Purchase Option Price in accordance with Section 701 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 702 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, under the Tax Certificate for any Series of Tax-exempt Bonds 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, and any amounts that may be required to be paid into a rebate fund at the times required hereunder and under any such Tax Certificate.

**SECTION 309. General Obligation of Company to Make Lease Payments; Pledge of Reimbursement Collateral; Company Pledge 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) Pledge of Section 1603 Grant to Trustee. As security and further assurance for the Lessee's obligations to make Lease Payments at the times, in the amounts, and otherwise in accordance with the terms and provisions of this Company Lease Agreement, and to fund the County Security Fund Requirement no later than \_\_\_\_\_, a covenant and undertaking hereby acknowledged and accepted by the Lessee (in accordance with the definition of County Security Fund Requirement, which includes the possibility of an amendment to the amount so contemplated by such definition in accordance with the terms thereof), the Lessee hereby grants to the Trustee a collateral security interest in the Section 1603 Grant. Pledge of Certain Revenues to Authority. As security and further assurance for the Lessee's obligations to perform its obligations under the Company Documents, 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 any funds it may receive with respect to

(i) the sale of renewable energy produced by the Renewable Energy Projects under the Power Purchase Agreement to the respective Series 2010 Local Units under the respective Local Unit License Agreements;

- (ii) the sale of SRECs from the Renewable Energy Projects; 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, 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 shall and hereby does acknowledge

(i) that the Lessor has the right to deliver County Security Agreement in accordance with the provisions of Section 5.07 of the Bond Resolution, whereupon the Reimbursement Collateral shall be assigned and pledged by the Lessor to the County and the County Security Provider in accordance with the terms of the County Guaranty Agreement and such County Security Agreement, respectively, as to which terms the Lessor hereby covenants that the rights of the County and the County Security Provider to the Reimbursement Collateral shall not adversely affect the Lessee's

(A) use and enjoyment of the Renewable Energy Projects,

(B) sale of the renewable energy produced therefrom under the Power Purchase Agreement to the respective Series 2010 Local Units under the respective Local Unit License Agreements, or

(C) SRECs,

in all cases prior to the date of an Event of Default caused by the Lessee, it being the express intent of the parties that any such assignment and pledge of the Reimbursement Collateral is only to protect the County and/or the County Security Provider to the extent any such Renewable Energy Program Interested Party shall not have been reimbursed for funds expended under the Program Documents due to the Lessee's actions or inactions under the Program Documents, and it being the further express intent of the parties that any and all such remedies flowing from any such Event of Default caused by the Lessee are within the Lessee's control to prevent by complying with the terms of this and all other Program Documents, including without limitation the making of Lease Payments in full and on time,

(ii) upon an Event of Default, including an occurrence as a result of the Lessee's failure to make its Lease Payments on time and in full, the Lessee's rights to the Leased Property may be terminated in accordance with the terms hereof, and the County and the County Security Provider, may realize all or

a portion of the Reimbursement Collateral in accordance with the terms of their respective County Guaranty Agreement and County Security Agreement, if any and as applicable, which economic benefits comprising the Reimbursement Collateral had been previously available to the Lessee, and would continue to be so available, should any such Event of Default never occur or be timely cured.

(d) As security and further assurance for the Lessee's obligations under the company Documents, 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, and to fund the County Security Fund Requirement no later than \_\_\_\_\_, a covenant and undertaking hereby acknowledged and accepted by the Lessee (in accordance with the definition of County Security Fund Requirement, which includes the possibility of an amendment to the amount so contemplated by such definition in accordance with the terms thereof), the Lessee hereby covenants to deliver the Company Pledge Agreement from the Pledgor defined in the Company Pledge Agreement contemporaneously herewith, and in any event, no later than the issuance of the Series 2010 Bonds, the terms of which Company Pledge Agreement are hereby acknowledged and accepted by the Lessee.

(e) The Lessee, as debtor, authorizes the Trustee, on behalf of itself as creditor, and the Lessor, as creditor, to file UCC1 financing statements with respect to the foregoing pledge of collateral contemplated by this Section 309.

**SECTION 310. Investment of Bond Resolution Funds; Credit for Certain Investment Earnings.**

(a) The Lessor shall cause the monies in the Funds and Accounts established under the Bond Resolution to be invested 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.

(b) (i) To the extent interest earnings on any such Funds or Accounts are transferred to the Aged Account of the Revenue Fund in accordance with the provisions of Section 5.11(3) and (4) of the Bond Resolution prior to any Basic Lease Payment Date, the Lessee shall be entitled to a credit in the amount of such earnings, plus interest earned thereon as of any such Basic Lease Payment Date, against the next due Interest Portion of Basic Lease Payments due and owing from the Lessee, and if not fully applied, against the next due Principal Portion of Basic Lease Payments due and owing from the Lessee, and if still not fully applied or if additional interest earnings are on deposit in the Aged Account, against the next due future Interest Portion, and then Principal Portion, of Basic Lease Payments until fully applied. The Lessor shall cause the Trustee, pursuant to the terms of the Bond Resolution, to notify

the Company in writing (with a copy to the Lessor), within ten (10) Business Days after each Basic Lease Payment Date, of the amount of such interest earnings credit available to the Company as of the next Basic Lease Payment Date.

(ii) To the extent amount on deposit in the Aged Account of the Revenue Fund, including interest earnings thereon, are transferred to the Interest Account of the Debt Service Fund in accordance with the provisions of Section 5.05(4)(b)(i) of the Bond Resolution prior to any Basic Lease Payment Date, the Lessee shall be entitled to a credit in the amount of such transfer against the next due Interest Portion of Basic Lease Payments due and owing from the Lessee, and if not fully applied, against the next due Principal Portion of Basic Lease Payments due and owing from the Lessee, and if still not fully applied, against the next due future Interest Portion, and then Principal Portion, of Basic Lease Payments until fully applied. The Lessor shall cause the Trustee, pursuant to the terms of the Bond Resolution, to notify the Company in writing (with a copy to the Lessor), promptly after any such transfer, of the amount of such transfer credit available to the Company as of the next Basic Lease Payment Date.

(iii) To the extent amount on deposit in the Aged Account of the Revenue Fund, including interest earnings thereon, are transferred to the Principal Account of the Debt Service Fund in accordance with the provisions of Section 5.05(4)(b)(ii) of the Bond Resolution prior to any Basic Lease Payment Date, the Lessee shall be entitled to a credit in the amount of such transfer against the next due Principal Portion of Basic Lease Payments due and owing from the Lessee, and if still not fully applied, against the next due future Interest Portion, and then Principal Portion, of Basic Lease Payments until fully applied. The Lessor shall cause the Trustee, pursuant to the terms of the Bond Resolution, to notify the Company in writing (with a copy to the Lessor), promptly after any such transfer, of the amount of such transfer credit available to the Company as of the next Basic Lease Payment Date.

## ARTICLE IV

### LEASE OF LEASED PROPERTY; TERM OF COMPANY LEASE AGREEMENT

#### SECTION 401. Lease of Leased Property.

(a) The Lessor hereby agrees to (i) finance the Renewable Energy Projects and the Capital Improvement Projects for the Series 2010 Local Units, and (ii) enter into the Local Unit License Agreements with the Series 2010 Local Units, thereby giving the Lessor nominal ownership of the Renewable Energy Projects, and providing the Company with a license and access to the Local Unit Facilities for the Series 2010 Local Units.

(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 and (ii) design, permit, acquire, construct, renovate, and install the Capital Improvement Projects as described on **Exhibit A-2** hereof, all for the Series 2010 Local Units.

(c) Upon the acquisition of the Leased Property, the Lessor hereby agrees to lease to the Lessee, except for the Reserved Rights, all of its right, title and interest in and to the Leased Property 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 from the Lessor, other than the Reserved Rights, all of the Lessor's right, title and interest in and to the Leased Property 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. The Lessor hereby acknowledges the Lessee's intent to exercise such option to purchase the Leased Property during or upon the termination of the Lease Term.

(d) It is an express purpose of this Company Lease Agreement that the benefits and burdens of owning the Leased Property being conveyed by the Lessor to the Lessee pursuant to this Company Lease Agreement be such that the Lessee shall be deemed to be the owner of the Leased Property for purposes of the Code.

#### SECTION 402. Lease Term.

(a) This Company Lease Agreement shall be and remain in effect with respect to the Leased Property (the "**Lease Term**") commencing on the date of authorization, execution, authentication and delivery of the Series 2010 Bonds that shall finance, among other things, the Renewable Energy Project component of the Leased Property, and continuing until terminated as provided for in this Section 402. The Term of this Company Lease Agreement shall terminate upon the occurrence of the first of the following of events:

(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 1002 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 Bonds, including 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 1103 hereof), to the extent permitted under then applicable law.

(b) Notwithstanding the foregoing, this Company Lease Agreement shall be in effect until all the obligations created hereunder have been fulfilled.

(c) 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 302 and 309 hereof.

#### **SECTION 403. Net Lease.**

(a) The Lessee intends for the Lease Payments to be net to the Lessor. 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 Project or (ii) any damage to or abandonment, destruction, requisition or taking of any portion of any Project.

(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, from a portion of the proceeds of the Bonds or otherwise, 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 501. 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 Series 2010 Local Units and within the parameters set forth in the Company 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 Net 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, are to be borne solely and wholly by the Lessee from any available funds.

(b) Copies of the Plans and Specifications, when in form satisfactory to the Lessee, shall be promptly delivered to the Lessor and respective the Series 2010 Local Units for the review, comment and approval of the Applicable Series 2010 Local Units. Within five (5) Business Days of receipt, each Applicable Series 2010 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 respective Series 2010 Local Units. To the extent approval from any Series 2010 Local Unit shall not be received, the Lessee shall promptly modify the Plans and Specifications to address the Series 2010 Local Unit concerns, whereupon the Lessee shall resubmit the Plans and Specifications to the Lessor and the Applicable Series 2010 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 Series 2010 Local Units; provided however, that both parties and the Applicable Series 2010 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 Series 2010 Local Units.

(c) Promptly after having received the respective Series 2010 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 receive any required Project permits or approvals.

#### **SECTION 502. Construction of Project.**

(a) The Lessee shall be responsible for the letting of Development Contracts with Contractors for (a) the design, permitting, acquisition, construction, installation, operation and maintenance of the Renewable Energy Projects for all of the Series 2010 Local Units, (b) the design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects for all of the Series 2010 Local Units, (c) 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 510(d)(i) hereof, (d) 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 510(d)(ii) hereof, and (e) 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 Series 2010 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/or (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 Series 2010 Local Unit and the Construction Manager with substantially final drafts thereof. Within a reasonable period of time thereafter, the Lessor, the Applicable Series 2010 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) 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 Series 2010 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 the completed Project available for occupancy and use by the Company with respect to the Renewable Energy Projects and the Applicable Series 2010 Local Unit with respect to the Capital Improvement Projects, on or before the date specified in the Development Contracts.

(c) None of the Lessor, the Series 2010 Local Unit or the Trustee makes any 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 Project.

### **SECTION 503. 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 Company 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 Series 2010 Local Unit as co-obligees, and shall be in amounts equal to the fixed contract price.

**SECTION 504. 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. All such actions shall be construed to be Costs of the Project for purposes of this Company Lease Agreement, inasmuch as the same shall be necessary to enable any such Project to be designed, permitted, constructed, acquired, renovated or installed in accordance with the terms hereof and of the Development Contracts. The Lessee agrees to advise the Lessor, in writing, of the steps it intends to take in connection with any such default. If the Lessee shall so notify the Lessor, the Lessor may, in good faith, in its own name or in the name of the Lessee, with notice to the Lessee, 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 Lessor hereby agrees to cooperate fully with the Lessee, but at the sole cost and expense of the Lessor. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall be paid into the Project Fund or the Revenue Fund, as shall be determined by the Lessee.

(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 505. Additional Rights of Lessee.**

The Lessor agrees that the Lessee shall, at its own expense, have the right to make immaterial changes to any 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 the Project or materially changing the design of the Project from the Plans and Specifications; provided, however, that none of the foregoing shall in any way damage the Project or cause the Project to be used for purposes other than those authorized under the provisions of all applicable law. With respect to any such additions (only) to the Project in accordance with the provisions of this Section 505, such additions shall for all purposes of this Company Lease Agreement be deemed to be and remain the property of the Lessee and shall not become part of the Project, and any such item may be removed, altered or changed by the Lessee upon or before the termination of this Company Lease Agreement; provided, however, that such removal, alteration or change shall not damage the Project or, if any such damage shall occur, the Lessee shall repair the same at its sole cost and expense.

**SECTION 506. Maintenance and Use of Project; Lessor Access; Repairs Not to Create Liens.**

(a) With respect to the Renewable Energy Projects or a portion thereof financed under this Company Lease Agreement, the Lessee shall, at its own and sole expense, maintain, preserve and keep such Projects or any portion thereof, as the case may be, in good repair, working order and condition, and shall from time to time make all repairs, replacements and improvements necessary to keep such Projects or any portion thereof in such condition. The requirements to repair and keep the Capital Improvement Projects in good working order shall remain with the owners thereof, the Applicable Series 2010 Local Units.

(b) The Lessee agrees that the Lessor and the Applicable Series 2010 Local Unit shall have the right (but not the obligation) to enter upon the premises at reasonable times and upon reasonable notice in a reasonable manner where the Renewable Energy Projects or a portion thereof, as the case may be, is 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 Series 2010 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 Series 2010 Local Unit.

(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 505 hereof and this Section 506, 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 Series 2010 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 Series 2010 Local Unit with full security against any such loss or forfeiture. The Lessor shall cooperate, and shall cause the Applicable Series 2010 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 507. Possession and Enjoyment of Projects during Lease Term.**

(a) 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 such Renewable Energy Projects, and the Lessee shall during such Lease Term peaceably and quietly have, hold and enjoy such Renewable Energy Projects, 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. The Lessor and the Applicable Series 2010 Local Unit shall, at the request of the Lessee and at the Lessee's sole cost and expense, join in any legal action in which the Lessee asserts its right to such possession and enjoyment against any third-party to the extent the Lessor and the Applicable Series 2010 Local Unit lawfully may so do; in addition, the Lessee, while not in default hereunder, may in its discretion and at its sole cost and expense bring any such action in the name of the Lessor.

(b) From and after the execution and delivery of the CIP Acceptance Certificate with respect to the applicable Capital Improvement Projects, the Lessor and the Lessee hereby agrees that during the Lease Term, the Applicable Series 2010 Local Unit, as fee owner thereof, shall have the quiet use and enjoyment of such Capital Improvement Projects, and the Applicable Series 2010 Local Unit shall during such Lease Term peaceably and quietly have, hold and enjoy such Capital Improvement Projects, without suit, trouble or hindrance from the Lessor or the Lessee, or any party claiming under or through the Lessor or the Lessee, except as may be expressly set forth in the Program Documents.

**SECTION 508. 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 Series 2010 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 Series 2010 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, to the maximum extent permitted by law.

**SECTION 509. 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 Series 2010 Local Units have been estimated by the Lessee under the Company RFP to be an aggregate amount not to exceed the Maximum Gross Bond Funded Project Cost Amount. Accordingly, the Lessor shall cause the Series 2010 Bonds to be issued, and further, shall cause the Maximum Net 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 represents that such initial deposit of the Maximum Net Bond Funded Project Cost Amount, together with interest to be earned thereon prior to disbursement in accordance with the terms hereof and of the Bond Resolution giving rise to the Maximum Gross Bond Funded Project Cost Amount, 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 Project Costs, in either case for all of the Series 2010 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 Net 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 Series 2010 Local Units on, in or about their Local Unit Facilities.

(c) Any Project Costs in excess of such estimated Project Cost amount as set forth in subsection (a) above shall be solely borne by and solely paid from any funds available to the Lessee (which shall not include monies under the Bond Resolution, absent the Lessor's written consent). 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 in an aggregate amount less than any such deposit, plus estimated investment earnings, in the amount of such estimated Project Costs, any excess 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, shall be applied as a credit to the next due Basic Lease Payments otherwise due and owing by the Lessee in accordance with Section 510(e)(i)(B) hereof and Section 5.02(3)(b) of the Bond Resolution.

(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 510 and 511 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 \$\_\_\_\_\_, 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; provided, however, that notwithstanding the foregoing, the Lessee may not withdraw moneys from the Project Fund for payment of Company Development Fees and Expenses, excluding those third-party and other Company Development Fees and Expenses approved by the Authority and paid upon issuance of the Series 2010A Bonds or thereafter, until the Company has satisfied, or caused the satisfaction of, all of the Completion Conditions. The Lessee, at its sole discretion, may apply less of the aggregate amount on deposit in the Project Fund and earmarked for payment of Company Development Fees and Expenses to such purpose, and instead apply all or a portion of such earmark (including any interest earned thereon) toward Costs of the Renewable Energy Projects or Capital Improvement Projects in the manner contemplated by Sections 510 and 511 hereof, and Section 5.02(2)(a) 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) and all Company Development Fees and Expenses (for which the Company shall submit such **Exhibit D** form Certificate), shall be applied in the manner set forth in Section 510(e) hereof.

**SECTION 510. 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 for an Applicable Series 2010 Local Unit (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 Series 2010 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) Except as otherwise provided in Section 511 hereof, 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, the “**Draw Papers**”), each executed by the Lessee, acknowledged by the Applicable Series 2010 Local Unit (in accordance with Section 4.1(d) of the Local Unit License Agreements, including the authority therein to delegate such right and obligation to the Construction Manager), and acknowledged as to form only by the Lessor (in accordance with Section 4.1(e) of the Local Unit License Agreements, including the authority therein to delegate such right and obligation to the Construction Manager), 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 Series 2010 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 the Company Lease Agreement, the Local Unit License Agreements with respect to the Series 2010 Local Units, and this 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 Series 2010 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 Series 2010 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 Series 2010 Local Unit, (B) all such Renewable Energy Projects or Completion Project related thereto, as the case may be, for each such Series 2010 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 Series 2010 Local Unit have been accepted by the Lessee and such Series 2010 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 Series 2010 Local Unit (in accordance with Section 4.2(c) of the Local Unit License Agreements, including the authority therein to delegate such right and obligation to the Construction Manager), until each such Certificate shall be further acknowledged by an Authorized Officer of the Lessor as to form only (in accordance with Section 4.2(d) of the Local Unit License Agreements, including the authority therein to delegate such right and obligation to the Construction Manager) and until accompanied by one or more Interconnection Agreements 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 Series 2010 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 Series 2010 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 Series 2010 Local Unit, (B) all such Capital Improvement Projects or Completion Project related thereto, as the case may be, for each such Series 2010 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 Series 2010 Local Unit have been accepted by such Series 2010 Local Unit. Each such REP Acceptance Certificate shall not be filed by the Lessee with the Trustee until so acknowledged by the Applicable Series 2010 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 Series 2010 Local Unit (in accordance with Section 4.3(c) of the Local Unit License Agreements, including the authority therein to delegate such right and obligation to the Construction Manager), and until each such Certificate shall be further acknowledged by an Authorized Officer of the Lessor as to form only (in accordance with Section 4.3(d) of the Local Unit License Agreements, including the authority therein to delegate such right and obligation to the Construction Manager); 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 Series 2010 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 Series 2010 Local Unit.

(e) If, upon the completion of the design, permitting, acquisition, construction, renovation and installation of all of the Projects for the Series 2010 Local Units on or prior to \_\_\_\_\_, as evidenced by the filing of all Acceptance Certificates by the Company, as duly acknowledged by the Series 2010 Local Units and the Lessor, on or prior to \_\_\_\_\_, all in accordance with the terms hereof, of the Bond Resolution, and of the Local Unit License Agreements for the Series 2010 Local Units, then upon the Trustee's receipt of the final Acceptance Certificate so designated, the Trustee shall, without any further authorization, (i) (A) 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 Series 2010 Local Units, and (B) transfer any surplus funds remaining on deposit in the Project Fund to the Debt Service Fund for application as a credit to the next due Interest Portion of Basic Lease Payments due from the Lessee, and if not fully applied, to the next due Principal Portion of Basic Lease Payments due from the Lessee, and if still not fully applied, then to the next due future Interest Portion, and then Principal Portion, of Basic Lease Payments until fully applied, all unless the provisions of Section 5.02 of the Bond Resolution require application otherwise, in which case the Trustee shall (ii) apply any such retainage and surplus funds remaining on deposit in the Project Fund in accordance with the terms of Section 5.02 of the Bond Resolution. To the extent the final Acceptance Certificate for all of the Series 2010 Local Units shall not have been filed by the Lessee, as duly acknowledged by the Series 2010 Local Units and the Lessor, all in accordance with the terms hereof, of the Bond Resolution, and of the Local Unit License Agreements for the Series 2010 Local Units, on or prior to \_\_\_\_\_ (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(3)(b) of the Bond Resolution.

**SECTION 511. Reimbursement to Lessor from Moneys in the Project Fund.**

Notwithstanding the provisions of Section 510 hereof to the contrary, the Lessee shall be entitled to submit Draw Papers to the Trustee and receive reimbursement for the amounts set forth in such Draw Papers for advances made with respect to the Projects, prior to a given Draw Date, so long as the Lessee submits the requisite requisition and supporting copies of invoices prior to being reimbursed directly by the Trustee.

**SECTION 512. 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 Series 2010 Local Unit as named insureds, in such amounts as their interests may appear. Evidence of such insurance shall be filed with the Lessor.

**SECTION 513. 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 514. 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 515. Construction Manager.**

At its sole discretion, the Lessor may employ one or more Construction Manager, payable from a portion of the proceeds of the Series 2010 Bonds in excess of the Maximum Net Bond Funded Project Cost Amount, 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 Series 2010 Local Units and/or the (b) design, permitting, acquisition, construction, renovation, and installation of the Capital Improvement Projects for the Series 2010 Local Units.

## **ARTICLE VI**

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

#### **SECTION 601. 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 Series 2010 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 602. 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 Series 2010 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 \$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 Respondent, the Authority, the local government entities and their employees, agents and officers from and against any claim arising out of personal injury of Respondent or the Respondent's failure to comply with the terms of this PPA. Such policy or policies of insurance shall include coverage for claims of any persons as a result of an incident directly or indirectly related to the employment of such persons by a Respondent or by any other persons. This coverage shall include blanket contractual insurance and such coverage shall make express reference to the indemnification provisions set forth in this 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 614 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 603. 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 Series 2010 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 614 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 604. [Reserved].**

**SECTION 605. 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 606. 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 Series 2010 Local Units. Said policy or policies shall be in the amount of \$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 excess of the required Comprehensive General Liability Coverage, the Employers' Liability Coverage on the Workers' Compensation policy, and the Comprehensive Automobile Liability policy.

**SECTION 607. 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 Series 2010 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 Series 2010 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 Series 2010 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 Series 2010 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 Series 2010 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 608. Indemnification.**

The Lessee shall (a) indemnify and save harmless the Lessor and the Series 2010 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 Series 2010 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 the Series 2010 Local Units for all losses, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees) that the Lessor or the the Series 2010 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 Series 2010 Local Units, as applicable, has acted with gross negligence or willful misconduct in connection with the liabilities for which the Lessor or the Series 2010 Local Units, as applicable, is seeking indemnification or reimbursement. All amounts that become due from the Lessee under this Section 608 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 Series 2010 Local Units, as applicable (which demand cannot be made prior to the Lessee's receipt thereof), and shall survive the termination or expiration of this Company Lease Agreement.

**SECTION 609. 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 respective Series 2010 Local Units shall be the fee owners of the respective Capital Improvement Projects described in any such Certificates. The parties further acknowledge that the Lessor may assign the Reimbursement Collateral pursuant to the terms of the County Security Agreement and/or the County Guaranty Agreement. 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 Renewable Energy Projects (but such provision shall not apply to the Capital Improvement Projects, the Lessor having no interest therein) or any interest therein to any other Renewable Energy Program Interested Party or other third-party (other than to the Lessee pursuant to Article VII hereof), 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 Renewable Energy Projects during or upon the termination of this Company Lease Agreement, with credit toward the Basic Lease Payments for any such purchase price paid, all in accordance with Article VII hereof.

(b) Upon the termination of this Company Lease Agreement in accordance with Section 402(a)(iii) or (iv) hereof, (i) all of the Lessor's right, title and interest in and to the Renewable Energy Projects (and not the Capital Improvement Projects, the Lessor having no interest therein) shall be deemed sold, for purposes of State law, by the Lessor to the Lessee for the consideration of all previous Basic Lease Payments, and to the extent the Lessor was deemed to have a fee interest therein for purposes of State law, such interest shall be deemed extinguished under State Law, (ii) except for the rights of the Series 2010 Local Units to effect a fair market value purchase of their respective Renewable Energy Projects in accordance with

subsection (d) 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 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 Renewable Energy Projects, 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 Renewable Energy Projects in accordance with Section 402(a)(i) and Sections 701 or 702, as applicable, hereof, (i) the rights of the Lessor and the Lessee in the title to the Renewable Energy Projects (but not the Capital Improvement Projects, which title shall remain with the respective Series 2010 Local Units) shall be as set forth in Section 703 hereof, (ii) except for the rights of the Series 2010 Local Units to effect a fair market value purchase of their respective Renewable Energy Projects in accordance with subsection (d) 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 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 Renewable Energy Projects, 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) Upon the termination of this Company Lease Agreement as contemplated in Section 609(b) or (c) above, the parties acknowledge that (i) the Company and each Series 2010 Local Unit shall have [ninety (90)] days from any such termination to negotiate a fair market value purchase price for the Renewable Energy Project developed for any such Applicable Series 2010 Local Unit and (ii) to the extent the Company and any such Applicable Series 2010 Local Unit can agree to any such fair market value purchase price for such Renewable Energy Project, the parties acknowledge that the right, title and interest in and to such Renewable Energy Project may be sold by the Lessee to any such Applicable Series 2010 Local Unit for such fair market value price, and any other terms and conditions, all in accordance with the provisions of Section 5.2(a)(ii)(A) of the Local Unit License Agreement for any such Applicable Series 2010 Local Unit.



(e) Upon the termination of this Company Lease Agreement due to a Lessee Event of Default in accordance with Section 402(a)(ii) hereof, (i) Lessor shall possess full right, title and interest in and to the Renewable Energy Projects for all of the Series 2010 Local Units (but not the Capital Improvement Projects, which title shall remain with the respective Series 2010 Local Units), (ii) Lessee shall have no further leasehold or other right, title and interest in and to such Renewable Energy Projects (nor any such Capital Improvement Projects), (iii) except for the rights of the Series 2010 Local Units to effect a nominal value purchase of their respective Renewable Energy Projects 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 Renewable Energy Projects, 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 609(e) above, the parties acknowledge that the right, title and interest in and to the Renewable Energy Project developed for any one or more Series 2010 Local Units may be sold by the Lessor to any such Applicable Series 2010 Local Unit for nominal consideration in accordance with the provisions of Section 5.2(a)(iv) of the Local Unit License Agreement for such Applicable Series 2010 Local Unit.

**SECTION 610. 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, 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 Series 2010 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 611. 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 611 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 Trustee, and shall survive the termination or expiration of this Company Lease Agreement.

**SECTION 612. Advances.**

If the Lessee shall fail to perform any of its obligations under this Company Lease Agreement, the Lessor or the Applicable Series 2010 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 Series 2010 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 613. 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 Series 2010 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 Series 2010 Local Units evidence of such payments. All such policies shall provide that the Applicable Series 2010 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 Series 2010 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 Series 2010 Local Units or the Authority, as the case may be.

(d) The Lessee shall cause to be delivered to the Applicable Series 2010 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 Series 2010 Local Units and the Lessor, that the insurance policies required by this Company Lease Agreement are in full force and effect.

#### **SECTION 614. 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 Series 2010 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 701. 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 Renewable Energy Projects, nor the Series 2010 Local Units right, title and interest in and to the Capital Improvement Projects. At the Lessee's option, as directed in a Certificate of an Authorized Officer of the Company delivered by the Company to the Trustee, the Lessor, 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 next due Principal Portion of Basic Lease Payments due from the Lessee, and then to the next due future Interest Portion, and then 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 Company, which in the case of such defeasance option selected by the Company, such Certificate of the Company shall be acknowledged by an Authorized Officer of the Authority 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 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 Renewable Energy Projects (but not the

Capital Improvement Projects) in whole, at the times set forth in Section 701(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 accrued 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 or defeasance or other Administrative Expenses incurred by any party to a Program Document in implementing such prepayment.

The Lessee may direct the Trustee in writing, with a copy to the Lessor, that all or a portion of the Purchase Option Price (where all of the Outstanding Bonds shall be paid) shall be funded from the County Security Fund, and the Lessor shall cause the Trustee, pursuant to the terms set forth in the Bond Resolution, to promptly comply with any such direction.

(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.

(c) Notwithstanding any provision herein or in any Program Document to the contrary, the Lessee may not 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 to any redemption date and (B) Administrative Expenses of the Lessor 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 set forth in the Company RFP, or, if not provided therein and incorporated herein, as the Lessor, in its sole discretion, shall determine.

**SECTION 702. 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 Renewable Energy Projects (but not the Capital Improvement Projects) 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 or 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 703. Effect of Prepayment.**

In the event of a deposit sufficient to purchase the Renewable Energy Projects (but not the Capital Improvement Projects) pursuant to Section 701 or 702 hereof and to pay any and all amounts due hereunder, (i) all of the Lessor’s right, title and interest in and to such Renewable Energy Projects (but not the Capital Improvement Projects, as to which the Lessor has no right, title or interest) shall be deemed sold to the Lessee for the consideration set forth in such Sections, (ii) except for the rights of the Series 2010 Local Units to effect a fair market value purchase of their respective Renewable Energy Projects in accordance with Section 609(d) hereof, 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 Renewable Energy Projects (but not the Capital Improvement Projects, as to which the Lessor has no right, title or interest), 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 704. Substitution of Project.**

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 Series 2010 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 801.       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 Series 2010 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 Somerset County or a division of Somerset 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 701 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 Series 2010 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 Somerset County or a division of Somerset 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 802. 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 801(a)(y) or 801(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 802(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 801(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 801(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 therefore 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 803. Cooperation of Lessor.**

The Lessor and the Applicable Series 2010 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 801 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 Series 2010 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 804.       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 901. Assignment by Lessor.**

Except for this Company Lease Agreement and as otherwise provided below and in any other Program Document, including without limitation with respect to its payment obligations under the Power Purchase Agreement to the Series 2010 Local Units under the Local Unit License Agreements, or with respect to the assignment of the Reimbursement Collateral to the County and the County Security Provider under the County Guaranty Agreement and the County Security Agreement, as applicable, the Lessor shall not assign its obligations under this Company Lease Agreement and no such purported assignment thereof shall be effective. 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 Project shall be assigned by the Lessor to the Trustee pursuant to the pledge of the Trust Estate under the Bond Resolution no later than the execution and delivery hereof.

#### **SECTION 902. Lease Payments to Trustee.**

The Lessor and the Lessee hereby agree that from and after the adoption of the Bond Resolution and the execution of this Company Lease Agreement, so long as the same shall remain in effect, payment by the Lessee to the Trustee or, if applicable, to the successor thereto of any moneys or sums due hereunder from the Lessee to the Lessor shall satisfy the obligation of the Lessee to pay such money or sums.

#### **SECTION 903. 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 and the Applicable Series 2010 Local Units, in their sole discretion, as the Lessee entered into this Company Lease Agreement as the successful respondent pursuant to the Company RFP and all applicable law, and the Lessor and the Series 2010 Local Units have selected the Lessee, and not any assignee, to receive the rights, and perform the duties and obligations hereunder. Any such purported assignment or sublease shall be deemed null and void without such prior written consent.

#### **SECTION 904. 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 and the Applicable Series 2010 Local Units, in their sole discretion, as the Program Documents contemplate such Projects being available, directly in the case of the Capital Improvement Projects, or indirectly in the case of the Renewable Energy Projects as a source of power, for the benefit of the Series 2010 Local Units.

**SECTION 905. Reorganization.**

It is understood and agreed by the parties hereto that reorganization of the Lessee with the consent of the Lessor shall not constitute an assignment under this Article IX.

## **ARTICLE X**

### **EVENTS OF DEFAULT; REMEDIES**

#### **SECTION 1001. 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 after written notice thereof has been given to the Lessee by the Lessor or the Trustee [or the affected Series 2010 Local Unit]; provided, however, that if such failure cannot be cured within said thirty (30) day period, the Lessee shall not be in default if it has commenced to cure within such thirty (30) day 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 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 Series 2010 Local Unit] that any material statement, representation or warranty made by the Lessee in this Company Lease Agreement, 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 [Leased Property] [ Project] or for any part thereof 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 1001, the Trustee shall transmit a written notice, including electronic mail, of such Event of Default to the Lessor, the Lessee and the Series 2010 Local Units within thirty (30) days of the Trustee's knowledge thereof.

(c) Upon the occurrence of an Event of Default under this Section 1001, all obligations of the Lessee under this Company Lease Agreement shall remain in full force and effect.

#### **SECTION 1002. Remedies.**

(a) Upon the occurrence and continuation of any Event of Default as described in Section 1001 hereof, at the option of the Lessor, the Mandatory Purchase Price with respect to the Project shall become immediately due and payable by the Lessee upon the Lessor's declaration. So long as the Lessee is not in default hereunder, the Lessee shall have the right to direct all remedial proceedings under this Company Lease Agreement, including the consent to remedies taken upon an Event of Default. Subject to the preceding sentence, the Lessor shall have the right, without any further demand or notice, to take one or any combination of the remedial steps below:

(i) With or without terminating this Company Lease Agreement, take possession of the Renewable Energy Projects, the SRECs, and any other portion of the Leased Property, and exclude the Lessee from using it; provided, however, that if this Company Lease Agreement has not been terminated, the Lessor shall return possession of same to the Lessee when the Event of Default has been cured; and provided, further, that the Lessee shall continue to be responsible for the Lease Payments due hereunder during the remainder of the Lease Term.

(ii) With or without terminating this Company Lease Agreement, take possession of the Renewable Energy Projects the SRECs, and any other portion of the Leased Property, and sell, lease or sublease its interest therein or any part thereof.

(iii) With or without terminating this Company Lease Agreement, take possession of the Renewable Energy Projects, the SRECs, and any other portion of the Leased Property, and apply any portion of same, or of the proceeds of same (in accordance with clause (ii) above) in accordance with the

provisions of Section 5.07(1)(b) of the Bond Resolution

(iv) 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.

(v) 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 1003. Reinstatement.**

Notwithstanding any termination of this Company Lease Agreement that shall be made in accordance with the provisions of Section 1002 hereof, unless the Lessor shall have entered into a firm bilateral agreement providing for the reletting of the Project for a period of at least one year, if, after the maturity of the Outstanding Bonds shall have been accelerated by the Trustee (upon the occurrence of an Event of Default) under the terms of the Bond Resolution, (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 Series 2010 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 Lessee's Event of Default hereunder shall be waived without further action by the Trustee or the Lessor or any other Renewable Energy program Interested Party. 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 1004. 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 1005. 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 1006. 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 1007. 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 1007 shall not be applicable if or to the extent the application thereof would affect the validity of this Company Lease Agreement.

**SECTION 1008. 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.





With a copy to:

- (c) If to the Trustee:

With a copy to:

- (d) If to the Series 2010 Local Units: See **Exhibit A-4** attached hereto.
- (e) If to the Construction Manager:

**SECTION 1102. 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 1103. 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 Series 2010 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 Series 2010 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 1104. 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 1105. Applicable Law.**

This Company Lease Agreement shall be governed by and construed in accordance with the laws of the State.

**SECTION 1106. 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 1107. 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 1108. 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 1109. 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 1110. Inspections Permitted.**

The Lessee shall, whenever requested, advise the Lessor and the Applicable Series 2010 Local Units of the exact location and condition of the Projects. The Lessor and the Applicable Series 2010 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 1111. 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 1112. 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 1113. 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 1114. 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 SOMERSET COUNTY  
IMPROVEMENT AUTHORITY, as Lessor**

[SEAL]

By: \_\_\_\_\_  
**Richard E. Williams, Chairman**

**ATTEST:**

By: \_\_\_\_\_  
**Ellen Sandman, Secretary**

[COMPANY],  
as Lessee

By: \_\_\_\_\_, **Managing Member**

[SEAL]

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

**ATTEST:**

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

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

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

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Notary Public

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

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.

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Notary Public

## **EXHIBIT A**

### **1. DESCRIPTION OF PROJECTS**

**EXHIBIT A-1:** See attached Description of Renewable Energy Project for each Series 2010 Local Unit

**EXHIBIT A-2:** See attached Description of Capital Improvement Project for each Series 2010 Local Unit

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

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

### **3. NOTICE INFORMATION FOR SERIES 2010 LOCAL UNITS**

**EXHIBIT A-4:** Notice Information for Series 2010 Local Units

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

The maximum Project Costs financed by the Series 2010 Bonds is the Maximum Net 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 RFP.

### **Somerset County Improvement Authority**

not to exceed \$55,000,000 aggregate principal amount of  
County of Somerset Guaranteed Renewable Energy Program Lease Revenue [Notes] Bonds,  
Series 2010A, B (Federally Taxable)

### **Series 2010 Local Unit List of Local Unit Facilities**

#### **a. Series 2010 Municipal Local Units**

1. *Borough of Bound Brook* (<http://www.boundbrook-nj.org/>)

Public Works Building<sup>1</sup> (Roof, 108 kw<sup>2</sup>)

Chimney Rock Road  
Bound Brook, NJ 08805

2. *Township of Bridgewater* (<http://www.bridgewaternj.gov/>)

Library, Somerset County Library Headquarters (Roof, 143 kw)

1 Vogt Dr.  
Bridgewater, NJ 08807

Senior Center (Canopy, 64 kw)

445 Somerville Rd.  
Bridgewater, NJ 08807

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<sup>1</sup> Building is owned by the County, leased to Bound Brook.

<sup>2</sup> All kw references are estimates

3. *Township of Franklin* (<http://www.franklintwpnj.org/>)  
  
Berry Street Garage (Roof, 48 kw)  
12 Berry Street  
Somerset, NJ 08873  
  
Municipal Building (Roof, 68 kw)  
475 DeMott Lane  
Somerset, NJ 08873
4. *Borough of Manville* (<http://www.manvillenj.org/>)  
  
Manville Public Library (Roof, 54 kw)  
100 South 10<sup>th</sup> Avenue  
Manville, NJ 08835
5. *Township of Montgomery* (<http://www.montgomery.nj.us/>)  
  
Otto Kaufman Community Center (Roof, 16 kw)  
356 Skillman Road  
Skillman, NJ 08558
6. *Borough of Somerville* (<http://www.somervillenj.org/>)  
  
Engine Company No. 1 (Roof, 18 kw)  
170 East Main Street  
Somerville, NJ 08876-2317

**b. Series 2010 Board of Education Local Units**

1. *Board of Education of the Township of Branchburg*  
(<http://www.branchburg.k12.nj.us/bburg>)

Central Middle School (Roof, 356 kw)  
220 Baird Road  
Branchburg, NJ 08876-3784

Old York School (Roof, 168 kw)  
580 Old York Road  
Branchburg, New Jersey 08876

Whiton Elementary School (Roof, 51 kw)  
470 Whiton Rd  
Branchburg, New Jersey 08876

2. *Bridgewater-Raritan Regional Board of Education*  
(<http://www.brrsd.k12.nj.us>)

Adamsville Primary School (Roof, 189 kw)  
400 Union Avenue  
Bridgewater, NJ 08807-3109

Bridgewater Raritan High School, Building 1000 (Roof, 768 kw)  
600 Garretson Road, PO Box 6569  
Bridgewater, NJ 08807

Hamilton Primary School (Roof, 209 kw)  
PO Box 6030 Hamilton Lane  
Bridgewater, NJ 08807

Middle School (Roof, 347 kw)  
P.O. Box 6933  
Merriwood Drive  
Bridgewater, NJ 08807

3. *Franklin Township Board of Education* (<http://www.franklinboe.org>)

Elizabeth Avenue School (Roof, 83 kw)  
363 Elizabeth Avenue  
Somerset, NJ 08873-1101

Franklin High School (Roof, 533 kw; Canopy, 536 kw)  
500 Elizabeth Avenue  
Somerset, NJ 08873-5200

Franklin Park School (Roof, 288 kw; Canopy, 195 kw)  
30 Eden Street  
Franklin Park, NJ 08823, NJ 08873

Pine Grove Manor School (Roof, 65 kw)  
130 Highland Avenue  
Somerset, NJ 08873-2063

4. *Board of Education of Green Brook Township* (<http://www.gbtps.org>)

Green Brook Middle School (Roof, 340 kw)  
132 Jefferson Avenue  
Green Brook, NJ 08812-2699

Irene E. Feldkirchner Elementary School (Roof, 146 kw)  
105 Andrew Street  
Green Brook, NJ 08812-2599

5. *Manville Board of Education* (<http://www.manvilleschools.org>)

Manville High School (Canopy, 265 kw)  
1100 Brooks Boulevard  
Manville, NJ 08835-1599

Weston Elementary School (Roof, 131 kw; Canopy, 93 kw)  
600 Newark Avenue  
Manville, NJ 08835-2299

6. *Montgomery Township Board of Education*  
(<http://www.mtsd.k12.nj.us/montgomerytsd>)

Montgomery High School (Roof, 1030 kw)  
1016 Route 601  
Skillman, NJ 08558-1799

Montgomery Upper Middle School (Ground, 426 kw)  
375 Burnt Hill Road  
Skillman, NJ 08558

Orchard Hill Elementary School (Roof, 381 kw)  
244 Orchard Road  
Skillman, NJ 08558-2599

7. *Somerville Board of Education* (<http://www.somervillenjk12.org>)

Somerville High School (Roof, 192 kw)  
222 Davenport Street  
Somerville, New Jersey 08876

Somerville Middle School (Roof, 135 kw)  
51 West Cliff Street  
Somerville, New Jersey 08876

Van Derveer Elementary School (Roof 297; Canopy, 95)  
51 Union Avenue  
Somerville, NJ 08876

**c. Series 2010 County Local Units**

1. *County of Somerset, NJ* (<http://www.co.somerset.nj.us/>)

Emergency Services Training Academy – Administrative Building (Roof, 69 kw)  
402 Roycefield Road  
Hillsborough, NJ, 08844

Somerset County Courthouse (Roof, 41 kw)  
40 North Bridge Street  
Somerville, NJ 08876-2111

2. *Raritan Valley Community College* (<http://www.raritanval.edu/>)

Arts Building Parking Lot (Canopy, 318 kw)  
118 Lamington Road  
Branchburg, New Jersey 08876

## **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  
(paying 5 months prior to Series 2010 Bonds)**

<b>Basic Lease Payment Date</b>	<b>Interest Portion</b>	<b>Principal Portion</b>	<b>Total Basic Lease Payment</b>
December 15, 2011			
June 15, 2012			
December 15, 2012			
June 15, 2013			
December 15, 2013			
June 15, 2014			
December 15, 2014			
June 15, 2015			
December 15, 2015			
June 15, 2016			
December 15, 2016			
June 15, 2017			
December 15, 2017			
June 15, 2018			
December 15, 2018			
June 15, 2019			
December 15, 2019			
June 15, 2020			
December 15, 2020			
June 15, 2021			
December 15, 2021			
June 15, 2022			
December 15, 2022			
June 15, 2023			
December 15, 2023			
June 15, 2024			
December 15, 2024			
June 15, 2025			
December 15, 2025			



**EXHIBIT A-4**  
**NOTICE INFORMATION FOR SERIES 2010 LOCAL UNITS**  
**Somerset County Improvement Authority**  
not to exceed \$55,000,000 aggregate principal amount of  
County of Somerset Guaranteed Renewable Energy Program Lease Revenue [Notes] Bonds,  
Series 2010 (Federally Taxable)

**Series 2010 Local Unit Distribution List**

**a. Series 2010A Municipal Local Units**

7. *Borough of Bound Brook*

230 Hamilton Street  
Bound Brook, NJ 08805  
<http://www.boundbrook-nj.org>

Randy W. Bahr  
Borough Administrator  
Phone: (732) 356-0833, X 638  
Fax: (732) 356-3662  
Email: R. [Bahr@boundbrook-nj.org](mailto:Bahr@boundbrook-nj.org)

8. *Township of Bridgewater*

Bridgewater Township Municipal Building  
100 Commons Way  
Bridgewater, NJ 08807  
<http://www.bridgewaternj.gov/>

James T. Naples  
Township Administrator  
Phone: (908) 725-6300 ext. 5004  
Fax: (908) 725-3192  
Email: [administrator@bridgewaternj.gov](mailto:administrator@bridgewaternj.gov)

9. *Township of Franklin*

475 DeMott Lane  
Somerset, NJ 08873  
<http://www.franklintwpnj.org/>

Kenneth W. Daly  
Township Manager

Phone: 732-873-2500, X 201  
Fax: 732-873-1059  
[kenneth.daly@twp.franklin.nj.us](mailto:kenneth.daly@twp.franklin.nj.us)

10. *Borough of Manville*

325 North Main Street,  
Manville, NJ 08835  
<http://www.manvillenj.org/>

Gary P. Garwacke, P.E.,  
Administrator  
Phone: (908) 725-9478 x 103 Asst. Nancy  
Fax: (908) 231-8620  
Email: [ggarwacke@manvillenj.org](mailto:ggarwacke@manvillenj.org)

11. *Township of Montgomery*

Montgomery Township Municipal Offices  
2261 Van Horne Road  
Route 206 North  
Belle Mead, NJ 08502  
<http://www.montgomery.nj.us/>

Donato Nieman  
Administrator  
Phone: (908) 359-8211  
Fax: (908) 359-4402  
e-mail: [dnieman@twp.montgomery.nj.us](mailto:dnieman@twp.montgomery.nj.us)

12. *Borough of Somerville*

Borough Hall  
25 West End Ave.  
Somerville, NJ 08876  
<http://www.somervillenj.org/>

Kevin Sluka  
Clerk-Administrator  
Phone: (908) 725-2300, X 1983  
Fax: (908) 725-2859  
[ksluka@somervillenj.org](mailto:ksluka@somervillenj.org)

**b. Series 2010A Board of Education Local Units**

8. *Board of Education of the Township of Branchburg*

240 Baird Road  
Branchburg, New Jersey 08876-4200  
<http://www.branchburg.k12.nj.us/bburg>

Katherine P. Attwood  
Business Administrator  
Phone: (908) 722-3335, X 4740  
Fax: (908) 526-6144  
Email: [kattwood@branchburg.k12.nj.us](mailto:kattwood@branchburg.k12.nj.us)

9. *Bridgewater-Raritan Regional Board of Education*

Wade Administration Building  
836 Newmans Lane  
PO Box 6030  
Bridgewater, NJ 08807  
<http://www.brrsd.k12.nj.us>

Peter F. Starrs  
School Business Administrator/Board Secretary  
Phone: (908) 685-2777 ext. 212  
Fax:  
[pstarrs@brrsd.k12.nj.us](mailto:pstarrs@brrsd.k12.nj.us)

10. *Franklin Township Board of Education*

1755 Amwell Rd.  
Somerset, NJ 08873  
<http://www.franklinboe.org>

John Calavano  
Assistant Superintendent for Business/Board Secretary  
Phone: (732) 873-2400  
Fax: (732)  
[jcalavano@franklinboe.org](mailto:jcalavano@franklinboe.org)

11. *Board of Education of Green Brook Township*

132 Jefferson Ave  
Green Brook, NJ 08812-2608  
<http://www.gbtps.org>

Nicholas Puleio (**Interim**)  
Business Administrator/Board Secretary  
Phone: (732) 968-1171  
Fax: (732) 968-1869  
Email: [npuleio@gbtps.org](mailto:npuleio@gbtps.org)

12. *Manville Board of Education*

410 Brooks Blvd  
Manville, NJ 08835-1542  
<http://www.manvilleschools.org>

Kimberly A. Clelland  
Business Administrator/Board Secretary  
Phone: (908) 231-8500  
Fax: (908) 704-0510  
Email: [kclelland@manvillesd.org](mailto:kclelland@manvillesd.org)

13. *Montgomery Township Board of Education*

1014 Route 601  
Skillman, NJ 08558-2119  
<http://www.mtsd.k12.nj.us/montgomerytsd>

Thomas M. Venanzi  
School Business Administrator/Board Secretary:  
Phone: (609) 466-7601  
Fax: (609) 466-0944  
Email: [tvenanzi@mtsd.us](mailto:tvenanzi@mtsd.us)

14. *Somerville Board of Education*

51 West Cliff St.  
Somerville, NJ 08876-1903  
<http://www.somervillenjk12.org>

Bryan P. Boyce  
Business Administrator  
Phone: (908) 218-4102  
Fax: (908) 526-9668  
Email: [bboyce@somervillenjk12.org](mailto:bboyce@somervillenjk12.org)

**c. Series 2010A County Local Units**

3. *County of Somerset, NJ*

Somerset County Administration Building  
P.O. Box 3000  
20 Grove Street  
Somerville, NJ 08876  
<http://www.co.somerset.nj.us/>

Richard E. Williams  
County Administrator  
Phone: (908) 231-7040  
Fax: (908) 231-1740  
Email: [Williams@co.somerset.nj.us](mailto:Williams@co.somerset.nj.us)

4. *Raritan Valley Community College*

118 Lamington Road  
Branchburg, New Jersey 08876  
<http://www.raritanval.edu/>

[Dr. Casey Crabill](#)  
President  
Phone: (908) 526-8270  
Fax: (908) 526-0253  
Email: [kcrabill@raritanval.edu](mailto:kcrabill@raritanval.edu).

## **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 \_\_\_\_\_ (the “**Company**”), pursuant to the terms of that certain “Lease Purchase Agreement (Somerset County Renewable Energy Program, Series 2010)” dated as of \_\_\_\_\_, 2010 (the “**Company Lease Agreement**”) between The Somerset 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 Series 2010 Local Unit (the “**Licensor**”) (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 Licensor 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 609(a) of the Company Lease Agreement, to generate renewable energy therefrom to be sold through the Authority to the Licensor, all as set forth in the Program Documents. This Section 3, together with the Licensor’s acknowledgment below by an Authorized Officer thereof, shall constitute the Company’s and the Licensor’s acceptance of the [A] Renewable Energy Projects for all purposes of Section 510(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 510(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 510(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 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 REP Acceptance Certificate is the final Acceptance Certificate for purposes of Section 510(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 Licensor set forth below, this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[LICENSOR]

[By: CONSTRUCTION MANAGER]

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

Name:

Title:

The form (only) of this REP Acceptance Certificate is hereby **ACKNOWLEDGED** by **THE SOMERSET 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 \_\_\_\_\_ (the “**Company**”), pursuant to the terms of that certain “Lease Purchase Agreement (Somerset County Renewable Energy Program, Series 2010)” dated as of \_\_\_\_\_, 2010 (the “**Company Lease Agreement**”) between The Somerset 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 Series 2010 Local Unit (the “**Licensor**”) (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 Licensor’s execution of the acknowledgment below, the Company is satisfying the requirement regarding the Licensor’s acceptance of (a) the [**A**] Capital Improvement Projects for all purposes of Section 510(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 Licensor with a portion of the proceeds of the Bonds, with title thereto as set forth in Section 609 of the Company Lease Agreement and (b) the CIP Acceptance State. This Section 3, together with the Licensor’s acknowledgment below by an Authorized Officer thereof, shall constitute the Licensor’s acceptance of the [**A**] Capital Improvement Projects for all purposes of Section 510(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 510(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 510(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 510(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 Licensor set forth below, this \_\_\_\_ day of \_\_\_\_, 20\_\_.**

**[LICENSOR]**

**[By: CONSTRUCTION MANAGER]**

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

**Name:**

**Title:**

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

**[By: CONSTRUCTION MANAGER]**

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

**Name:**

**Title:**

**EXHIBIT C**

**FORM OF DRAW PAPERS**

Requisition No. \_\_\_\_

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

[\_\_\_\_], as Trustee

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

Dear Sir or Madam:

Pursuant to (i) Section 510(c) of that certain "Lease Purchase Agreement (Somerset County Renewable Energy Program, Series 2010)" dated as of \_\_\_\_\_, 2010 (the "**Company Lease Agreement**") by and between The Somerset County Improvement Authority (the "**Authority**"), as lessor, and \_\_\_\_\_ (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 Somerset 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 Series 2010 Local Unit (the "**Licenser**") (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 [\_\_\_\_], 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 Licensor: \_\_\_\_\_.

(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 Licensor: \_\_\_\_\_.

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. 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 Local Unit License Agreement for the Licensor.

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 Licensor set forth below, this \_\_\_\_ day of \_\_\_\_, 20\_\_.

[LICENSOR]

[By: CONSTRUCTION MANAGER]

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

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

[By: CONSTRUCTION MANAGER]

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



**Name:**  
**Title:**

**EXHIBIT C-1**

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

[Insert Image Document 1010459.1]

**EXHIBIT D**

**CERTIFICATE OF AN AUTHORIZED OFFICER OF THE LESSEE FOR COMPANY DEVELOPMENT FEES AND EXPENSES INCURRED ON BEHALF OF THE LESSEE**

The Somerset County Improvement Authority  
20 Grove Street, P.O. Box 3000  
Somerville, NJ 08876-1262  
Attention: Richard E. Williams, Chairman  
Williams@co.somerset.nj.us

[Trustee]

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

Dear Sir or Madam:

Pursuant to (i) Section 509(d) of that certain “Lease Purchase Agreement (Somerset County Renewable Energy Program, Series 2010)” dated as of \_\_\_\_\_, 2010 (the “**Company Lease Agreement**”) by and between The Somerset County Improvement Authority (the “**Authority**”), as lessor, and \_\_\_\_\_ (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 Somerset 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 SOMERSET  
COUNTY IMPROVEMENT AUTHORITY this  
\_\_\_ day of \_\_\_, 20\_\_.

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

Name:

Title:

**EXHIBIT E**

**[Attach form of Power Purchase Agreement and  
Company Continuing Disclosure Agreement]**