

## PLEDGE AND SECURITY AGREEMENT

THIS **PLEDGE AND SECURITY AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is executed by \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ (the "Pledgor"), the [sole] member of \_\_\_\_\_ (the "Company"), a limited liability company organized and existing under the laws of the State of \_\_\_\_\_, duly authorized to conduct business in the State of New Jersey (the "State"), in favor of The Hudson County Improvement Authority (the "Authority") or any assignee of the Authority, including a national banking association authorized and acting under the laws of the United States of America and further authorized to conduct business in the State, where the banking association acts as trustee (the "Trustee") under and pursuant to the terms of a certain Indenture of Trust, dated \_\_\_\_\_, 20\_\_\_\_, between the Authority and the Trustee, 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 sale of the Series 2012 Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the "Indenture").

### WITNESSETH

**WHEREAS**, simultaneously herewith, the Company has entered into that certain "Lease Purchase Agreement (Hudson County Renewable Energy Program)", as amended, modified and supplemented and in effect from time to time (the "Company Lease Agreement") with the Authority;

**WHEREAS**, simultaneously herewith, the Company has also entered into a Power Purchase Agreement (the "Power Purchase Agreement") and the Site License Agreements (the "License Agreements") with the Authority and the Local Units (the "Local Units"), and the Authority, the Company and the Trustee entered into a Company Pledge, Assignment and Security Agreement (the "Company Assignment Agreement");

**WHEREAS**, the Company has certain obligations (collectively, the "Obligations") set forth under the Company Lease Agreement, the Power Purchase Agreement, the License Agreements and the Company Assignment Agreement (collectively, and together with this Agreement, the "Company Agreements"), which if not performed by or on behalf of the Company, gives rise to an Event of Default as defined in and in accordance with the terms of such Company Agreements (each an "Event of Default");

**WHEREAS**, the Pledgor owns one hundred percent (100%) of the legal and beneficial ownership interests (the "Equity Interests") in and to the Company; and

**WHEREAS**, in order to secure the payment and performance of all Obligations of the Company, the Pledgor and the Company have granted the security interests contemplated by this Agreement, to be held in escrow, by the Trustee, pursuant to the terms of the Indenture.

**NOW, THEREFORE**, for and in consideration of the foregoing and of any financial accommodations or extensions of credit (including, without limitation, any loan or advance by renewal, refinancing or extension of the agreements described hereinabove) heretofore, now or hereafter made to or for the benefit of the Company and/or the Pledgor, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I**  
**GRANT OF SECURITY INTEREST; PLEDGED COLLATERAL**

1.01 Pledged Collateral. As security for the full and punctual payment and performance of the Obligations (whether at stated maturity, by required repayment, declaration, acceleration, demand or otherwise, including without limitation the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. §362(a), whether allowed or allowable as claims), the Pledgor, hereby grants, pledges, hypothecates, transfers and assigns to the Authority a first priority and continuing lien on, and first priority security interest, in, and, in furtherance of such grant, pledge, hypothecation, transfer and assignment, hereby transfers and assigns to the Authority as collateral security, all of the Pledgor's right, title, ownership, equity or other interests in and to the following, whether now owned or hereafter acquired, now existing or hereafter arising and wherever located (collectively, the "Pledged Collateral"):

(a) The Equity Interests of the Persons described in **Schedule 1** attached hereto, in and to the Company (the "Pledged Entity"), as and to the extent of their Equity Interests in and to the Company described on said **Schedule 1** (collectively, the "Pledged Equity");

(b) all rights, privileges, general intangibles, payments intangibles, voting rights, authority and power arising from its interest in the Pledged Equity;

(c) the capital of the Pledgor and any and all profits, losses, Distributions (as defined below), and allocations attributable to the Pledged Equity as well as the proceeds of any Distribution thereof, whether arising under the terms of any Organizational Agreement (as defined below) or otherwise;

(d) all other payments, if any, due or to become due, to the Pledgor and all other present or future claims by the Pledgor against any Pledged Entity, or in respect of the Pledged Equity, under or arising out of (i) any Organizational Agreement, (ii) monies loaned or advanced, for services rendered or otherwise, (iii) any other contractual obligations, commercial tort claims, supporting obligations, damages, insurance proceeds, condemnation awards or other amounts due to the Pledgor from any Pledged Entity or with respect to the Pledged Equity;

(e) the Pledgor's claims, rights, powers, privileges, authority, options, security interests, liens and remedies, if any, under or arising out of the ownership of the Pledged Equity;

(f) to the extent permitted by applicable law, the Pledgor's rights, if any, in any Pledged Entity pursuant to any Organizational Agreement, or at law, to exercise and enforce every right, power, remedy, authority, option and privilege of the Pledgor relating to the Pledged Equity, including without limitation, the right to (i) execute any instruments and to take any and all other action on behalf of and in the name of the Pledgor in respect of the Pledged Equity, (ii) exercise any and all voting, consent and management rights of the Pledgor in or with respect to any Pledged Entity, (iii) exercise any election (including, but not limited to, election of remedies) or option or to give or receive any notice, consent, amendment, waiver or approval with respect to any Pledged Entity, (iv) enforce or execute any checks, or other instruments or orders of any Pledged Entity, and (v) file any claims and to take any action in connection with any of the foregoing, together with full power and authority to demand, receive, enforce or collect any of the foregoing or any property of any Pledged Entity;

(g) all Investment Property (as such term is defined in Section §9-102 of the UCC (as defined below) issued by or relating to any Pledged Entity;

(h) all additional Equity Interests or other property, securities, or assets now existing or hereafter acquired by the Pledgor relating to the Pledged Equity, including, without limitation, as a result of any consolidation, combinations, mergers, reorganizations, acquisitions, exchange offers, recapitalizations of any type, contributions to capital, splits, spin-offs, or similar actions or the exercise of options or other rights relating to the Pledged Equity;

(i) all partnership certificates, member certificates, stock certificate, or any other instrument, note, chattel paper or certificate (including, without limitation, "certificated securities" within the meaning of §8-102 of the UCC) (whether or not qualifying as Investment Property) representing interests in the Pledged Equity and any interest of the Pledgor in the entries on the books of any financial intermediary pertaining to such certificates or writings, and all options and warrants for the purchase of such Equity Interests now or hereafter held in the name of the Pledgor (collectively, "Certificated Securities"), and all Certificated Securities in the Pledged Entity from time to time acquired by the Pledgor in any manner, and any interest of the Pledgor in the entries on the books of any financial intermediary pertaining to such Certificated Securities, and all securities convertible into and options, warrants, dividends, cash, instruments and other rights and options from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Certificated Securities (including all rights to request or cause the issuer thereof to register any or all of the Pledged Collateral under federal and state securities laws to the maximum extent possible under any agreement for such registration rights), and

all put rights, tag-along rights or other rights pertaining to the sale or other transfer of such Pledged Collateral, together in each case with all right under any Organizational Agreements pertaining to such rights;

(j) (i) all “proceeds” (as such term is defined in §9-102 of the UCC) of any or all of the foregoing (whether cash or non-cash proceeds, including insurance proceeds), (ii) whatever is receivable or received when any of the Pledged Collateral is sold, collected, exchanged or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes, without limitation, all rights to payment, including return premiums, with respect to any insurance relating thereto and also includes all interest, dividends and other property receivable or received on account of any of the Pledged Collateral or proceeds thereof, and in any event, shall include all Distributions or other income from any of the Pledged Collateral, all collections thereon or all Distributions with respect thereto, and (iii) all proceeds, products, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the Pledged Collateral. The inclusion of proceeds in the Pledged Collateral does not authorize the Pledgor to sell, dispose of or otherwise use the Pledged Collateral in any manner not specifically authorized hereby;

(k) To the extent any of the Pledged Collateral constitutes an “uncertificated security” (as defined in Section 8-102(a)(18) of the UCC), the Pledgor shall cause the issuer thereof to acknowledge to the Authority the registration on the books of such issuer of the pledge and security interest hereby created in the manner required by Section 8-301(b) of the UCC.

(l) The Pledgor, as debtor, authorizes the Authority, on behalf of itself as creditor, to file UCC-1 financing statements with respect to the foregoing pledge of collateral contemplated by this Section 1.01.

1.02 Definitions. Unless otherwise defined herein, all words and terms set forth and defined in the Company Agreements shall have the same meaning as set forth in the Company Agreements, as if fully set forth in this Agreement, and the following terms have the following meanings (such meanings being equally applicable to both the singular and plural forms of the terms defined):

(a) “Distributions” means all dividends, distributions, liquidation proceeds, cash, profits, instruments and other property and payments or economic benefits or interests to which the Pledgor is entitled with respect to the Pledged Equity whether or not received by or otherwise distributed to the Pledgor, whether such dividends, distributions, liquidation proceeds, cash, profits, instruments and other property and economic benefits are paid or distributed by the Pledged Entities in respect of operating profits, sales, exchanges, refinancing, condemnations or insured losses of the company’s assets, the liquidation of the company’s assets and affairs, management fees, guaranteed payments, repayment of loans, reimbursement of expenses or otherwise in respect of or in exchange for any or all of the Pledged Equity.

(b) “Organizational Agreement” means the certificate of incorporation, memorandum and articles of association and other organizational or governing documents, as applicable, of any Pledged Entity.

(c) “UCC” means the Uniform Commercial Code, as in effect from time to time in the State where the Property is located.

1.03 Perfection of Security Interest; Further Acts. On or before the Closing Date, the Pledgor shall (a) enter into such arrangements as may be necessary to give control of any pledged Investment Property to the Authority within the meaning of §8-106 of the UCC, (b) cause each Pledged Entity to execute and deliver the Agreement and Acknowledge of Pledge attached hereto as Exhibit A (the “Acknowledgement”), and (c) promptly take all other actions required to perfect the security interest of the Authority in the Pledged Collateral under applicable law. It is the intention of the Pledgor and the Authority that at all times while the Agreement remains in effect, the Pledged Equity shall constitute Investment Property, and, to that end, the Pledgor shall take, and shall cause each Pledged Entity to take, all necessary action to obtain such classification pursuant to the UCC.

1.04 Acts of the Authority. All of the Pledged Collateral at any time delivered to or at the direction of the Authority pursuant to this Agreement shall be held by such person subject to the terms, covenants and conditions set forth in the Company Agreements. Neither the Authority, the Trustee nor any of the such person’s directors, officers, agents, employees or counsel shall be liable for any action taken or omitted to be taken by such party or parties relative to any of the Pledged Collateral, except for such party’s or parties’ own gross negligence or willful misconduct. Such person shall be entitled to rely in good faith upon any writing or other document (including, without limitation, any telegram or e-mail) or any telephone conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person (but such person shall be entitled to such additional evidence of authority or validity as it may, in its sole and absolute discretion request, but it shall have no obligation to make any such request), and with respect to any legal matter, such person may rely in acting or in refraining from acting upon the advice of counsel selected by it concerning all matters hereunder.

1.05 Custody of Pledged Collateral. Neither the Authority nor the Trustee shall have any duty concerning the collection or protection of the Pledged Collateral or any income thereon or payments with respect thereto, or concerning the preservation of any rights pertaining thereto beyond exercising reasonable care with respect to the custody of any tangible evidence of the Pledged Collateral actually in its possession.

## **ARTICLE II**

### **POWERS OF THE PLEDGOR PRIOR TO AN EVENT OF DEFAULT**

2.01 Distributions; Exercise of Rights. Unless an Event of Default has occurred, and subject to the terms of the Company Agreements, the Pledgor shall be entitled to (a) receive cash Distributions allocable to the Pledged Collateral, and (b) exercise (but only in a manner that will not (i) violate or be inconsistent with the terms hereof or of any other Company Agreement or (ii) have the effect of impairing the position or interests of the Authority) the voting, consent, administration, management and all other powers, rights and remedies of the Pledgor with respect to the Pledged Collateral under the Organizational Agreements of any Pledged Entity (including all other rights and powers thereunder which are pledged hereunder or otherwise). If the Pledgor shall become entitled to receive or shall receive from any Pledged Entity (a) any non-cash Distribution as an addition to, on account of, in substitution of, or in exchange for the Pledged Collateral or any part thereof, or (b) upon the occurrence of any Event of Default, any cash Distributions, in either case the same shall immediately be remitted to or at the direction of the Authority (in the exact form received, with the Pledgor's endorsement or assignment or other instrument as the Authority may deem appropriate) to be held as additional Pledged Collateral for the Obligations or for application thereto, as applicable, and until so remitted, shall be received and held by the Pledgor in trust and as agent for the Authority.

2.02 Termination of Powers. Upon the occurrence of an Event of Default, all such powers, rights and remedies of the Pledgor, which are conditionally permitted pursuant to Section 2.01 of this Agreement, shall cease and the provisions of Article IV of this Agreement shall apply.

### **ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS OF PLEDGOR**

The Pledgor hereby represents, warrants and covenants with and to the Authority and Trustee as follows:

3.01 Percentage Ownership. The Pledgor, owns one hundred (100%) percent of the legal and beneficial ownership interests in and to all Pledged Equity. The Pledgor does not have any outstanding options or rights or other agreements to acquire or sell or otherwise transfer all or any portion of any Pledged Equity.

3.02 Title to Pledged Collateral. The Pledgor validly acquired and is the legal and beneficial owner of the Pledged Collateral in which it has granted a security interest, and transferred a collateral interest, herein, free and clear of all Liens except such as are created pursuant to this Agreement. The Pledgor has the legal right to pledge and grant a security interest in the Pledged Collateral as herein provided without the consent of any other person or entity, other than any such consent that has been obtained. The Pledgor will have like title in, and the right to pledge, any other property at any time hereafter acquired by the Pledgor and pledged to the Authority as Pledged Collateral hereunder.

3.03 Defense of Title. The Pledgor will defend the Authority's or Trustee's right, title and interest in and to the Pledged Collateral against the claims and demands of all other persons and entities.

3.04 No Transfer. Except for the transfer effected by this Agreement, the Pledgor will not transfer the Pledged Collateral, or any portion thereof, or suffer or permit any transfer thereof to occur. Any transfer made in violation of the foregoing provisions shall be an immediate Event of Default hereunder without notice or opportunity to cure and shall be void and of no force and effect, and upon demand of the Authority, shall forthwith be cancelled or satisfied by an appropriate instrument in writing.

3.05 Perfected Security Interest. Giving effect to this Agreement, the Authority has, with respect to all Pledged Collateral owned by the Pledgor on the Closing Date, and will have with respect to any other property at any time hereafter acquired by the Pledgor and pledged to the Authority as Pledged Collateral hereunder, a valid, perfected and continuing first lien upon and security interest in the Pledged Collateral.

3.06 No Financing Statements. Except for financing statements filed or to be filed in favor of the Authority or Trustee as secured party, or such other financing statements expressly permitted with the Authority's or Trustee's prior written consent, which may be withheld in such person's sole and absolute discretion, there are not now any financing statements under the UCC covering any or all of the Pledged Collateral filed in any public office, and the Pledgor will not authorize the filing of any such financing statements.

3.07 Certificated Securities. The Pledgor represents and warrants that none of the Pledged Equity is evidenced by a Certificated Security and shall promptly take all actions required to perfect the security interest of the Authority in such Pledged Equity under applicable law as required under Section 1.03 of this Agreement. The Pledgor further agrees to take such additional actions as the Authority deems necessary or desirable to effect the foregoing and to permit the Authority to exercise any of its rights and remedies hereunder and agrees to provide an opinion of counsel satisfactory to the Authority with respect to any such pledge of Equity Interests which are not Certificated Securities promptly upon request of such person. Without limiting the effect of the immediately preceding clause, the Pledgor, upon the occurrence of an Event of Default, hereby grants to the Authority, or its designate, an irrevocable proxy to vote the Pledged Equity and to exercise all other rights, powers, privileges and remedies to which a holder of the pledged equity would be entitled (including without limitation (a) giving or withholding written consents, (b) calling special meetings, (c) voting at such meetings, and (d) voting at any time or place) with respect to any action, decision, determination or election by the pledged entities or the holders of the respective equity interests therein that the Pledged Equity (or any new or additional equity interest in such Pledged Entity) be, or cease to be, a certificated security, and all other matters related to any such action, decision, determination or election, which proxy shall be effective automatically and without the necessity of any action (including any transfer of any

pledged equity on the record books of the issuer thereof) by any other person (including the issuer of the Pledged Equity or any officer or agent thereof) as of the date hereof) and which proxy shall only terminate upon the termination of this Agreement.

3.08 Fully Paid and Non-Assessable. All of the Pledged Equity has been duly authorized and validly created and is subject to no options to purchase or similar rights of any Person. The Pledgor is not, and will not become, a party to or otherwise be or become bound by any agreement, other than this Agreement and the other Company Agreements, which restricts in any manner the rights of any present or future holder of any of the Pledged Equity with respect thereto. There are no set-offs, counterclaims or defenses with respect to the Pledged Collateral owned by the Pledgor and no agreement, oral or written, has been made with any other person or party under which any deduction or discount may be claimed with respect to such Pledged Collateral and the Pledgor knows of no fact which would prohibit or prevent the Pledgor assigning or granting a security interest in the Pledged Collateral.

3.09 Organizational Agreements. Attached hereto as Exhibit B are true, correct, and complete copies of the Organizational Agreements of each Pledged Entity. The Organizational Agreements are in full force and effect and have not been modified or amended except as attached hereto. The Pledgor is not in default of any of his obligations under the Organizational Agreements nor is the Pledgor aware of a default by any other member in their respective obligations under the Organizational Agreements.

3.10 Amendments. The Pledgor shall not allow any Pledged Entity to (a) amend any provision of its Organizational Agreements, (b) dissolve, liquidate, wind-up, merge or consolidate with any other entity or (c) transfer any of its respective assets and properties to any Person except as permitted by the Company Agreements.

3.11 Authority, Enforceability, Etc. The execution, delivery and performance of this Agreement by the Pledgor will not cause a violation of or a default under the Organizational Agreements of the Pledgor or any Pledged Entity. The execution and delivery of this Agreement and the performance of the Pledgor's obligations hereunder will not conflict with or result in a breach of the terms or provisions of any (a) Law, (b) agreement to which the Pledgor or any Pledged Entity is a party or by which any of his assets are bound, or (c) judgment, decree, arbitration award, or pending litigation to which the Pledgor or any Pledged Entity is subject. No approval by, authorization or consent of, or filing with any Governmental Authority or any other Person is necessary in connection with the execution, delivery and performance by the Pledgor of this Agreement, or if such approval, authorization, or consent is necessary, it has been obtained. This Agreement constitutes the valid and legally binding obligations of the Pledgor and is fully enforceable against the Pledgor in accordance with its terms, subject to the effects of Bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and limitations imposed by general principles of equity. The jurisdiction of organization (as such term is defined in the UCC) and place of business of the Pledgor is set forth in the signature block of the



Pledgor. No change has been or will be made in the jurisdiction of organization or place of business of the Pledgor, except upon at least thirty (30) days' prior notice to the Authority and Trustee.

#### **ARTICLE IV**

#### **EVENTS OF DEFAULT AND REMEDIES**

If an Event of Default shall occur during the term of this Agreement:

4.01 Transfer Rights. Subject to the limitation of Section 4.10 hereof, the Authority or Trustee, as the case may be, shall have the right, at any time and from time to time, to affect the transfer of any or all of the Pledged Collateral, subject only to the provisions of the UCC and any other applicable statute which, in accordance with such statute, cannot be waived, in any one or more of the following ways:

(a) Register in the name of, or transfer to, the Authority or Trustee, a nominee or nominees, or designee or designees, of the Authority or Trustee; provided that the provisions of Section 5.06 of this Agreement are complied with;

(b) Sell, resell, assign and deliver, in the Authority's or Trustee's sole and absolute discretion, any or all of the Pledged Collateral or any other security for the Obligations (whether in whole or in part and at the same or different times) and all right, title and interest, claim and demand therein and right of redemption thereof, at public or private sale, for cash or upon credit (by the Authority or Trustee only), in accordance with the applicable procedures specified in Article V of this Agreement; and

(c) Proceed by a suit or suits at law or in equity to foreclose all or any part of the security interests in the Pledged Collateral and sell the Pledged Collateral or any portion thereof, under a judgment or decree of a court of competent jurisdiction, retaining during the duration of such judicial enforcement all other rights with respect to the Pledged Collateral, including specifically the rights specified hereafter in Article V of this Agreement with respect to each Pledged Entity.

4.02 Voting Rights. Upon the occurrence of an Event of Default, the Authority or Trustee may exercise, either by itself or by its nominee or designee, in the name of the Pledgor, the rights, powers and remedies granted to the Authority or Trustee hereunder and under the other Company Agreements in respect of the Pledged Collateral at any time prior to effecting the transfer of such Pledged Collateral to the Authority or Trustee or a nominee or designee of such person, or any third party purchasers, as contemplated in Sections 4.01(a) and (b) above, and whether or not any judicial action as contemplated in Sections 4.01(c) above has been commenced or is continuing prior to a final unappealable judgment. Such rights and remedies shall include, without limitation, and the Pledgor hereby grants to the Authority or Trustee the right to exercise by delivering notice to the Pledgor and the applicable Pledged Entity, (a) all voting, consent, managerial and other rights relating to the Pledged Equity, whether in the Pledgor's name or otherwise, including without limitation the right to

appoint officers, directors, managers and other similar positions and (b) the right to exercise the Pledgor's rights, if any, of conversion, exchange, or subscription, or any other rights, privileges or options pertaining to any of the Pledged Equity, including, without limitation, the right to exchange, at the Authority's or Trustee's sole and absolute discretion, any and all of the Pledged Equity upon the merger, consolidation, reorganization, recapitalization or other readjustment of such Pledged Entity, all without liability, except to account for property actually received by the Authority or Trustee. The Pledgor hereby irrevocably authorizes and directs each Pledged Entity, on receipt of any such notice (i) to deem and treat the Authority or Trustee, or a designated nominee, in all respects as a member, partner or shareholder, as applicable, (and not merely an assignee of a member, partner or shareholder) of such Pledged Entity, entitled to exercise all the rights, powers and privileges (including, without limitation, the right to vote on or take any action with respect to such Pledged Entity matters pursuant to the Organizational Agreement) thereof, to receive all distributions, to be credited with the capital account and to have all other rights, powers and privileges pertaining to such member, partner or shareholder interest, as applicable, to which the Pledgor would have been entitled had the Pledgor not executed this Agreement and (ii) to file an amendment to the Organizational Agreement of such Pledged Entity admitting the Authority or Trustee or such nominee(s) of either of them as a member, partner or shareholder in place of the Pledgor.

#### 4.03 Power of Attorney.

(a) The Pledgor hereby irrevocably authorizes and empowers the Authority, the Trustee, and assigns and transferees of the Authority and Trustee, and constitutes and appoints such person and any of its assigns, its true and lawful attorney-in-fact (coupled with an interest) and as its agent with full power of substitution for the Pledgor to proceed from time to time in the Pledgor's name, in order to more fully vest in such person the rights and remedies provided for herein, in any statutory or non-statutory legal or other proceeding, including without limitation, any Bankruptcy proceeding affecting any Pledged Entity or the Pledged Collateral and Pledgor's interest in any Pledged Entity or the Pledged Collateral.

(b) The Trustee and any of its assigns, or their respective nominees, may, to the extent permitted by applicable law, either pursuant to such power-of-attorney or otherwise, take any action and exercise and execute any instrument that determines necessary or advisable to accomplish the purposes of this Agreement, including without limitation: (i) execute and file proof of claim with respect to any or all of the Pledged Collateral against any Pledged Entity and vote such claims with respect to all or any portion of such Pledged Collateral (A) for or against any proposal or resolution, (B) for a trustee or trustees or for a receiver or receivers or for a committee of creditors, and/or (C) for the acceptance or rejection of any proposed arrangement, plan of reorganization, composition or extension; (ii) receive, endorse and collect all drafts, checks and other instruments for the payment of money made payable to the Pledgor representing any interest, payment of principal or other distribution payable in respect of the Pledged Collateral; (iii) execute endorsements, assignments or other instruments of conveyance

or transfer in respect of any other property which is or may become a part of the Pledged Collateral hereunder; and (iv) execute releases and negotiate settlements, as appropriate, including on account of, or in exchange for, any or all of the Pledged Collateral, or any payment or distribution received by the Pledgor, or the Trustee on the Pledgor's behalf.

(c) The foregoing power-of-attorney is irrevocable and coupled with an interest, and any similar or dissimilar powers previously given by the Pledgor in respect of the Pledged Collateral or any Pledged Entity to any Person or any other person or entity (other than the Trustee) are hereby revoked. The power-of-attorney granted herein shall terminate automatically upon the termination of this Agreement in accordance with the terms hereof.

4.04 Management Rights. The Authority or Trustee may at such time and from time to time thereafter, without notice to, or consent of, the Pledgor or any Person (to the extent permitted by law), but without affecting any of the Obligations, in the name of the Pledgor or in the name of the Authority or Trustee, as the case may be: (a) notify any other party to make payment and performance directly to the Authority or Trustee, (b) extend the time of payment and performance of, compromise or settle for cash, credit or otherwise, and upon any terms and conditions, any obligations owing to the Pledgor, or claims of the Pledgor under any Organizational Agreement of any Pledged Entity, as applicable, (c) file any claims, commence, maintain or discontinue any actions, suits or other proceedings deemed by the Authority or Trustee reasonably necessary or advisable for the purpose of collecting upon or enforcing any Organizational Agreement of any Pledged Entity and (d) execute any instrument and do all other things deemed reasonably necessary and proper by the Authority or Trustee to protect and preserve and realize upon the Pledged Collateral or any portion thereof and the other rights contemplated hereby.

4.05 Right of Substitution. The Authority and Trustee shall have the right, without notice to or consent of the Pledgor, to become, or to designate its nominee, designee, agent or assignee to become, a partner, member, officer or director, as applicable, of any Pledged Entity, in substitution of any existing Person serving in such capacity.

4.06 UCC Rights. The Authority or Trustee, as the case may be, may exercise all of the rights and remedies of a secured party under the UCC.

4.07 Self-Help Rights.

(a) Subject to all applicable Laws, the Authority and the Trustee shall each have the right, but not the obligation, to take any appropriate action as it, in its reasonable judgment, may deem necessary to (i) cure any Event of Default, (ii) cause any term, covenant, condition or obligation required under this Agreement or other Company Agreement to be promptly performed or observed on behalf of the Pledgor or (iii) protect the Pledged Collateral and any other security obtained pursuant to the other

Company Agreements. All amounts advanced by, or on behalf of, the Authority or Trustee in exercising its rights under this Article IV (including, without limitation, reasonable legal expenses and disbursements incurred in connection therewith), together with interest thereon at the Overdue Rate from the date of any such advance, shall be payable by the Pledgor to the Trustee upon demand therefor and shall be secured by the Pledged Collateral.

(b) The Authority and Trustee shall not be obligated to perform or discharge any obligation of the Pledgor or any Pledged Entity as a result of this Agreement. The acceptance by the Authority or Trustee of this Agreement shall not at any time or in any event obligate such person to (i) appear in or defend any action or proceeding relating to the Pledged Collateral to which it is not a party, or (ii) take any action hereunder or thereunder, or expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Pledged Collateral.

4.08 Remedies Cumulative. The obligations of the Pledgor under this Agreement shall be absolute and unconditional and shall remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated or otherwise affected by, any circumstances or occurrence except as specifically provided in this Agreement. The rights, powers and remedies of the Authority and Trustee under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which such person may have against the Pledgor or any Person pledging collateral pursuant to the other Company Agreements or existing at law or in equity or otherwise. The Authority's and Trustee's rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as the Authority and Trustee may determine in its sole and absolute discretion. **THE TRUSTEE AND TRUSTEE SHALL EACH HAVE NO DUTY TO EXERCISE ANY OF THE AFORESAID RIGHTS, POWERS AND REMEDIES AND SHALL NOT BE RESPONSIBLE FOR ANY FAILURE TO DO SO OR DELAY IN SO DOING.**

4.09 Notice of Exercise of Remedies. The Pledgor hereby waives notice of acceptance hereof, and except as otherwise specifically provided herein or required by provision of law which may not be waived, hereby waives any and all notices or demands with respect to any exercise by the Authority or Trustee of any rights or powers which it may have or to which it may be entitled with respect to the Pledged Collateral.

4.10 Temporary Limitation on Exercise of Remedies. If the Company admits an unaffiliated investor member who holds a fifty percent (50%) or greater interest in the equity, profits or losses of the Company ("Investor Member"), and the Investor Member or its successor(s) continues to hold such interest during the period referred to in this Section 4.10, this Agreement shall be subject to the following limitation from the date of admission of the Investor Member until the fifth (5th) anniversary of the Completion Date (as such term is defined in the Company Lease Agreement).

(a) Except as provided in paragraph (b) below with respect to a Payment Default (defined below), if the Company defaults in the performance of any of its obligations under the Company Agreements, and such default is not caused by the Pledgor, the Authority and its assigns shall not enforce any of its rights or remedies under this Agreement in a manner that would cause a Tax Benefit Recapture Event (defined below).

(b) If the Company defaults in the performance of its obligation to make any payment to the Authority, its assigns, any Local Unit or the County under any Company Agreement (a "Payment Default"), and such Payment Default is not caused by the Pledgor and is not cured within any applicable notice and cure period, for a period of one (1) year from the declaration of such Payment Default (the "Forbearance Period") the Authority and its assigns shall not enforce any of its rights or remedies under this Agreement in a manner that would cause a Tax Benefit Recapture Event. During the Forbearance Period, each party will cooperate with the other in good faith, at no out-of-pocket expense to the Authority or its assigns, to effect a remedy that would not cause a Tax Benefit Recapture Event. If, upon the expiration of such Forbearance Period all Payment Defaults have not been cured, the Authority and its assigns shall be permitted to enforce all rights and remedies under this Agreement without limitation.

The term "Tax Benefit Recapture Event" means the sale or disposition of any interest in the Renewable Energy Projects, or in the Company, in a manner which would cause or provide reasonable grounds for the Internal Revenue Service or the Department of Treasury to claim repayment (whether in whole or in part) of the grant paid to the Company by the United States Department of Treasury under Section 1603 of division B of ARRA.

## **ARTICLE V**

### **SALES OF THE PLEDGED COLLATERAL**

5.01 Right to Conduct Partial Sale of Pledged Collateral. In connection with any sale of the Pledged Collateral, the Authority may grant options and may impose reasonable conditions such as requiring any purchaser to represent that any "securities" constituting any part of the Pledged Collateral are being purchased for investment only. If all or any of the Pledged Collateral is sold at any such sale by or at the direction of the Authority to a third party upon credit, neither the Authority nor the Trustee shall be liable for the failure of the purchaser to purchase or pay for the same and, in the event of any such failure, the Authority may, or may cause, such Pledged Collateral to be resold. It is expressly agreed that the Authority may exercise its rights with respect to less than all of the Pledged Collateral, leaving unexercised its rights with respect to the remainder of the Pledged Collateral; provided, however, that such partial exercise shall in no way restrict or jeopardize the Authority's right to exercise its rights with respect to the remaining Pledged Collateral at a later time or times. The Pledgor hereby waives and

releases any and all rights of redemption with respect to the sale of any Pledged Collateral.

5.02 Sale Procedures. Except as may be required by any Laws, no demand, advertisement or notice, all of which are hereby expressly waived by the Pledgor, shall be required in connection with any sale or other disposition of all or any part of the Pledged Collateral, except that the Authority shall give the Pledgor at least ten (10) days' prior notice of the time and place of any public sale or of the time and the place at which any private sale or other disposition is to be made, which notice the Pledgor hereby agrees is reasonable. All other demands, advertisements and notices are hereby irrevocably waived by the Pledgor. The notice of such sale shall (a) in case of a public sale, state the time and place fixed for such sale, (b) in case of a sale at a broker's board or on a securities exchange, state the board or exchange at which such sale is to be made and the day on which the Pledged Collateral, or the portion thereof so being sold, first will be offered for sale at such board or exchange and (c) in the case of a private sale, state the date after which such sale may be consummated. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Trustee may fix in the notice of such sale.

5.03 Adjournment; Credit Sale. The Authority shall not be obligated to make any sale of the Pledged Collateral if it shall determine, in its sole and absolute discretion, not to do so, regardless of the fact that notice of sale may have been given, and the Authority may without notice or publication adjourn any public or private sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. Upon each public or private sale of all or any portion of the Pledged Collateral, unless prohibited by any applicable statute which cannot be waived, the Authority (or its nominee or designee) may purchase all or any portion of the Pledged Collateral being sold, free and clear of, and discharged from, any trusts, claims, equity or right of redemption of the Pledgor, all of which are hereby waived and released to the extent permitted by law, and may make payment therefor by credit against any of the Obligations in lieu of cash or any other obligations.

5.04 Expenses of Sale. In the case of any sale, public or private, of any portion of or all of the Pledged Collateral, the Pledgor shall be responsible for the payment of all reasonable costs and expenses of every kind for the sale and delivery, including, without limitation, brokers' and reasonable attorneys' fees and disbursements and any tax imposed thereon. The proceeds of the sale of the Pledged Collateral shall be available to cover such costs and expenses, and, after deducting such costs and expenses from the proceeds of the sale, the Trustee shall apply any remaining amounts to the payment of the Obligations in the order of priority as set forth in the Company Agreements.

5.05 No Public Registration of Sale. The Pledgor is aware that §9-610(c) of the UCC may restrict the Authority's or its designee's ability to purchase the Pledged Collateral at a private sale. The Pledgor is also aware that Securities and Exchange Commission (the "SEC") staff personnel have, over a period of years, issued various

No-Action Letters that describe procedures which, in the view of the SEC staff, permit a foreclosure sale of securities to occur in a manner that is public for purposes of Part 6 of Article 9 of the UCC, yet not public for purposes of Section 4(2) of the Securities Act of 1933 (the "Securities Act"). The Pledgor is also aware that the Authority or its designee may wish to purchase certain interests that are sold at a foreclosure sale, and the Pledgor believes that such purchases would be appropriate in circumstances in which such interests are sold in conformity with the principles set forth in such No-Action Letters. §9-603 of the UCC permits the Pledgor to agree on the standards for determining whether the Authority or its designee has complied with its obligations under §9-610. Pursuant to §9-603 of the UCC, the Pledgor specifically agrees that a foreclosure sale conducted in conformity with the principles set forth in such No-Action Letters (a) shall be considered to be a "public disposition" for purposes of §9-610(c) of the UCC; (b) will be considered commercially reasonable notwithstanding that the Authority or its designee has not registered or sought to register the interests under the Securities Act, even if the Pledgor or any Pledged Entity agree to pay all costs of the registration process; and (c) shall be considered to be commercially reasonable, notwithstanding that the Authority or its designee purchases such interests at such a sale.

5.06 Strict Foreclosure. Upon the occurrence of an Event of Default:

(a) The Authority may, but shall have no obligation to, in its sole and absolute discretion, either negotiate an agreement ("Strict Foreclosure Agreement") with the Pledgor, or make a written proposal ("Strict Foreclosure Proposal") to the Pledgor, to retain the Pledged Collateral in full or partial satisfaction of the Obligations in accordance with the procedures specified in §9-620 of the UCC.

(b) In the case of a Strict Foreclosure Proposal, the Pledgor shall, within ten (10) Business Days of the Pledgor's receipt of the Strict Foreclosure Proposal, indicate the Pledgor's (i) acceptance or rejection of such Strict Foreclosure Proposal and (ii) waiver of any right to redeem the Pledged Collateral pursuant to §9-624(c) of the UCC ("UCC Waiver"). The Pledgor's indication of acceptance of a Strict Foreclosure Proposal shall be made by delivering a notice in a form substantially identical to the form attached hereto as Exhibit C.

(c) The Authority shall notify any guarantor, any other creditor with perfected lien rights in the Pledged Collateral, and any Person, or any other person or entity entitled to notice under §9-621 of the UCC ("Interested Parties") of any Strict Foreclosure Agreement or Strict Foreclosure Proposal. Such Interested Party shall, within ten (10) Business Days of receipt of notice thereof, indicate its (i) acceptance or rejection of the Strict Foreclosure Agreement or the Strict Foreclosure Proposal, and (ii) UCC Waiver.

(d) If the Authority fails to receive (i) the Pledgor's acceptance of a Strict Foreclosure Proposal and UCC Waiver or (ii) acknowledgements from all Interested Parties of acceptance of the Strict Foreclosure Agreement or the Strict Foreclosure

Proposal, as applicable) and their respective UCC Waivers, within ten (10) Business Days of receipt of the notice periods specified in subsections (b) and (c) above (collectively the "Notice Period"), then the Pledgor, or such other Interested Party, as applicable, shall be deemed to have objected to the Strict Foreclosure Agreement or the Strict Foreclosure Proposal, as applicable.

(e) Notwithstanding the acceptance of either a Strict Foreclosure Agreement or a Strict Foreclosure Proposal by the Pledgor and each Interested Party within the applicable Notice Period, the Pledgor and the Authority shall not be required to consummate such transfer of the Pledged Collateral unless and until (i) twenty (20) days have elapsed after the delivery of such acceptance and, (ii) any Interested Party shall have not paid and satisfied the Indebtedness in full within such twenty (20) day period as contemplated under §9-623 of the UCC (a "Redemption"). If a Redemption is consummated, the Pledgor's acceptance shall be deemed to have been revoked with the consent of the Authority.

(f) If all the conditions specified in subsections (a) through (e) of this Section 5.06 have been satisfied, the Pledgor and each Pledged Entity shall fully cooperate, at their sole expense, in all matters deemed reasonably necessary by the Authority to effect such transfer of ownership on the records of such Pledged Entity in accordance with any applicable requirements of the Organizational Agreement of such Pledged Entity and/or the Company Agreements. Such cooperation shall include using the Pledgor's best efforts to assist the Authority in obtaining any necessary review, approvals and other administrative action from such Pledged Entity and the Authority. Such assistance shall include, at the Authority's request (i) attending all meetings with, and providing all related financial and operational documents and materials to, such third parties, and (ii) providing such assurances and executing such documentation as is required by such third parties or the Authority to effect such transfer.

5.07 Receipt of Sales Proceeds. Upon any sale of the Pledged Collateral, or any portion thereof, by or on behalf of the Authority hereunder (whether by virtue of the power of sale herein granted, pursuant to judicial process or otherwise), the receipt of the proceeds by or for the benefit of the Authority or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Pledged Collateral so sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Authority or such officer or be answerable in any way for the misapplication or non-application thereof.

5.08 Application of Pledged Collateral. All proceeds from the sale of all or any portion of the Pledged Collateral, and all Distributions now or at any time hereafter received or retained by or on behalf of the Authority pursuant to the provisions of this Agreement shall be applied to the satisfaction of the Obligations in such order and priority as determined by the Authority in its sole and absolute discretion and in accordance with applicable law.



5.09 Preferences. The Authority shall have no obligation to marshal any assets in favor of the Pledgor or any other party or against, or in payment of, any or all of the Obligations. To the extent the Pledgor makes a payment or payments to the Authority, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any Bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Obligations intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Trustee.

## **ARTICLE VI** **SECURITIES ACT**

6.01 Private Securities Sale. If at any time when the Authority shall determine to exercise its right to sell all or any part of the Pledged Collateral pursuant to Article V of this Agreement, and such Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act, as then in effect, the Authority may, in its sole and absolute discretion, sell such Pledged Collateral or part thereof by private sale (for securities law purposes) in such manner and under such circumstances as the Authority may deem necessary or advisable in order that such sale may legally be effected without such registration, provided that at least ten (10) days' notice is given to the Pledgor in accordance with the private sale notice provisions of Article V of this Agreement. Without limiting the generality of the foregoing, in any such event the Authority, in its sole and absolute discretion (a) may proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under such Securities Act, (b) may approach and negotiate with a single potential purchaser to effect such sale and (c) may restrict such sale to a purchaser who will represent and agree that such purchaser is purchasing for its own account, for investment, and not with a view to the distribution or sale of such Pledged Collateral or part thereof. In the event of any such sale, the Authority shall incur no responsibility or liability for selling all or any part of the Pledged Collateral at a price which the Authority may in good faith deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might be realized if the sale was made pursuant to a filed registration statement under the Securities Act.

## **ARTICLE VII** **MISCELLANEOUS**

7.01 Further Assurances. The Pledgor hereby agrees to sign and deliver to or at the direction of the Authority financing statements, continuation statements and other documents, agreements, and instruments, in form acceptable to the Authority, and do such further acts, as the Authority may from time to time reasonably request or which are reasonably necessary to establish and maintain a valid and perfected security interest in the Pledged Collateral (and to pay any filing fees relative thereto) or to further assure or confirm the Authority's rights hereunder. Without limiting the foregoing, the

Pledgor authorizes the Authority, to the extent permitted by law, to file such financing statements and amendments thereto and continuations thereof relating to all or any part of the Pledged Collateral without the signature of the Pledgor (including, to the extent permitted by law, to file a photographic or other reproduction of this Agreement).

7.02 No Release, Etc. No delay or omission to exercise any remedy, right or power accruing upon a default or an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of any default or Event of Default shall not be construed to be a waiver of any subsequent default or Event of Default or to impair any remedy, right or power of the Authority. Any and all of the Authority's rights with respect to any Pledged Collateral shall continue unimpaired, and the Pledgor shall be and remain obligated in accordance with the terms hereof, notwithstanding, among other things: (a) any renewal, extension, amendment or modification of, or addition or supplement to, or deletion from, this Agreement or any other Company Agreement or any other instrument or agreement referred to therein, or any assignment or transfer of any thereof; (b) any waiver, consent, delay, extension of time, indulgence or other action or inaction under or in respect of this Agreement or any other Company Agreement; (c) any exercise or non-exercise of any right, remedy, power or privilege under or in respect of this Agreement or any other Company Agreement; (d) any sale, exchange, release, surrender, or substitution of, or realization upon, any Pledged Collateral (except to the extent otherwise specifically agreed to by the Authority) or any other security held by the Authority to secure the Obligations; (e) the furnishing to or acceptance by the Authority of any additional security to secure the Obligations; or (f) any invalidity, irregularity or unenforceability of all or any part of the Obligations or of any security therefor.

7.03 Notices. All notices, consents, approvals, demands and requests required or permitted hereunder shall be given in the manner set forth in the Company Lease Agreement.

7.04 Modification; Waiver in Writing. No modification, amendment, extension, discharge, termination or waiver of any provision of this Agreement, nor consent to any departure by the Pledgor therefrom, shall in any event be effective unless the same shall be in a writing signed by the party against whom enforcement is sought, and then such waiver or consent shall be effective only in the specific instance, and for the purpose, for which given. Except as otherwise expressly provided herein, no notice to, or demand on the Pledgor, shall entitle the Pledgor to any other or future notice or demand in the same, similar or other circumstances.

7.05 Number and Gender. All references to sections and exhibits are to sections and exhibits in or to this Agreement unless otherwise specified. Unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision, article, section or other subdivision of this Agreement. Unless otherwise specified, all meanings attributed to defined terms herein shall be equally

applicable to both the singular and plural forms of the terms so defined. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

7.06 Headings, Etc. The headings and captions of various paragraphs of this Agreement are for the convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

7.07 Counterparts. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

7.08 GOVERNING LAW; SEVERABILITY. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS THEREUNDER. WHEREVER POSSIBLE, EACH PROVISION OF THIS AGREEMENT SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS AGREEMENT SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS AGREEMENT.

7.09 JURY TRIAL. THE PLEDGOR AND THE AUTHORITY (BY ACCEPTANCE OF THIS AGREEMENT) MUTUALLY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THE RENEWABLE ENERGY PROJECT AND ANY COMPANY AGREEMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE AUTHORITY RELATING TO THE ENFORCEMENT OF THE COMPANY AGREEMENTS, AND AGREE THAT NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, THE PLEDGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION ANY EXEMPLARY, OR PUNITIVE DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE PLEDGOR CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE AUTHORITY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE AUTHORITY WOULD NOT, IN THE EVENT OF

LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE AUTHORITY TO ACCEPT THIS AGREEMENT.

7.10 Successors and Assigns. This Agreement and all obligations of the Pledgor hereunder shall be binding upon the successors and assigns of the Pledgor, except that the Pledgor shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Authority. The Authority shall have the right, without the consent of the Pledgor or the Company, to assign its interest in this Agreement and all rights and remedies of the Authority hereunder shall inure to the benefit of the Authority and its participants, successors and assigns. Neither this Agreement nor anything set forth herein is intended to, nor shall it, confer any rights on any person or entity other than the parties hereto and all third party rights are expressly negated.

7.11 Term; Termination of Pledge. This Agreement shall terminate upon the termination (other than as a result of an Event of Default) of the Company Lease Agreement. Upon termination of the Agreement, the Trustee shall promptly take all actions to release and/or terminate the pledge under this Agreement.

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the Pledgor has caused this Pledge and Security Agreement to be duly executed and delivered, all as of the day and year first above written.

WITNESS: [Parent]

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

**Schedule 1**

<b>Pledgor, consisting of the following Persons</b>	<b>Pledged Entity</b>	<b>Pledged Equity Interest</b>
	Company	All Membership Interests

## Exhibit A

### **AGREEMENT AND ACKNOWLEDGMENT**

THE UNDERSIGNED hereby agrees, acknowledges and consents to the execution and delivery to or at the direction of the Hudson County Improvement Authority (the "Authority"), or any assignee of the Authority, including a national banking association authorized and acting under the laws of the United States of America and further authorized to conduct business in the State of New Jersey (the "State"), where the Trustee acts as trustee (together with its successors, assigns, and designees for the purposes hereof, the "Trustee") under and pursuant to that certain Indenture of Trust, dated \_\_\_\_\_, 2011, between the Authority and the Trustee, 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 sale of the Series 2012 Bonds (as the same may be amended or supplemented from time to time in accordance with its terms, the "Indenture"), of the Pledge and Security Agreement, dated the date hereof, to which this Agreement and Acknowledgement is attached (the "Pledge Agreement"), made by all of the Persons (collectively, the "Pledgor"), as collateral security for the payment and performance of the Obligations, and the assignment and pledge thereby to the Authority by the Pledgor of all of the Pledgor's right, title and interest to the Pledged Collateral described therein. All capitalized terms used herein not otherwise defined herein shall have the meanings ascribed to such terms in the Pledge Agreement.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, hereby represents, warrants, covenants and agrees for the benefit of the Authority, its successors and assigns, as follows:

1. Representations and Warranties. The undersigned represents and warrants that (a) the execution and delivery of the Pledge Agreement does not violate any of such undersigned's Organizational Agreements or any other agreement to which such undersigned is a party or by which any of the property of such undersigned is bound, (b) the undersigned has not entered into a control agreement perfecting a security interest in any of the Equity Interests favor of any other party (other than pursuant to the Permitted Encumbrances), (c) the Pledged Collateral is not subject to any security interest or lien in favor of any Person, or other person or entity (other than the Authority) and has not been pledged, transferred or assigned to, and is not otherwise in the control of, any Person, or other person or entity (other than the Authority), (d) the undersigned does not have any present claim, right of offset, or counterclaim against the Pledgor under or with respect to the Pledged Collateral or otherwise under any of the undersigned's Organizational Agreements, (e) the Pledgor is not in default to the undersigned or otherwise under or in respect of any of his obligations under any of such undersigned's Organizational Agreements, and (f) all of the representations and warranties of the Pledgor made in the Pledge Agreement are true, accurate and complete in all material respects.

## 2. Covenants and Agreements.

(a) Books and Records. The undersigned (i) shall cause all of its respective books and records to reflect the pledge of the Pledged Collateral to the Authority and agrees not to consent to or to permit any transfer thereof or any other action that may be taken by the Pledgor that might constitute an Event of Default so long as the Pledge Agreement remains in effect, (ii) agrees that the Authority and/or its representatives may, upon reasonable advance notice and at any reasonable time during normal business hours, inspect the books, records and properties of such undersigned.

(b) UCC Matters. The undersigned confirms, agrees and acknowledges that (i) notwithstanding any provisions in the Organizational Agreements, the Pledgor is hereby authorized and permitted to pledge, assign and grant a security interest in the Pledged Collateral in favor of the Authority pursuant to the Pledge Agreement, (ii) this Agreement and Acknowledgment is intended to, and shall, provide the Authority with "control" over the Pledged Collateral within the meaning of Articles 8 and 9 of the UCC, (iii) it shall comply with all instructions relating to the Pledged Collateral originated by the Authority without further authorization or consent, so long as such instructions are within the powers of the Authority set forth in the Pledge Agreement, the intention of such covenant being to comply with §8-106(c)(2) of the UCC, and (iv) no Equity Interest other than the Pledged Equity of the undersigned is valid or will be recognized by the undersigned.

(c) Organizational Agreements. The undersigned shall not suffer or permit its Organizational Agreements to be amended or modified without the prior written consent of the Authority. The undersigned shall not issue any Equity Interests to any person, or admit any members, unless such persons agree to be bound by the Pledge Agreement and pledge their membership interests in accordance therewith.

(d) Notices; Defaults. The undersigned shall give the Authority a copy of all notices, reports or communicates received or given pursuant to its Organizational Agreements promptly after the same shall have been received or contemporaneously with the giving thereof, as the case may be. The undersigned shall permit the Authority the right to cure any default by the Pledgor under the Organizational Agreements, and no notice of any default by the Pledgor with respect to the Organizational Agreements shall be effective unless and until such notice has been received by the Authority; provided, however, in no event shall the Authority be obligated to cure such default. The Authority shall have fifteen (15) days in excess of the amount of time to cure any such default as given to the Pledgor under the Organizational Agreements, as measured from the date notice of such default has been received by the Authority.

3. Events of Default; Sales of Pledged Collateral. The undersigned hereby agrees that upon the occurrence of an Event of Default, (a) all Distributions will be made directly to the Authority, (b) the Authority shall have the sole and exclusive right to



exercise all voting, consensual and other powers of ownership pertaining to the Pledged Collateral, (c) the Authority may take any reasonable action which the Authority may deem necessary for the maintenance, preservation and protection of any of the Pledged Collateral or the Authority's security interests therein, including, without limitation, the right to declare any or all Obligations to be immediately due and payable without demand or notice and the right to transfer any of the Pledged Equity or other Pledged Collateral into the Authority's name or the name of any designee or nominee of the Authority, (d) the Authority may dispose of the Pledged Collateral in accordance with Articles 8 and 9 of the UCC and the provisions of the Pledge Agreement, in which case, notwithstanding anything to the contrary in the Organizational Agreements, (i) the Authority, or its designee or assign, shall automatically be admitted as a member of the undersigned and shall be entitled to receive all benefits and exercise all rights in connection therewith pursuant to the Organizational Agreements of the undersigned, (ii) the undersigned shall recognize the Authority (or its designee or assign) as the successor in interest to the Pledgor, and (iii) notwithstanding any provisions to the contrary in the Organizational Agreements, the Authority shall not be required to pay any fees or other consideration of any type, or execute any documents, or be limited by any requirements or conditions whatsoever (regarding Distributions receivable by the Authority from the undersigned, the Authority's financial condition or otherwise), other than any such requirements, if any, that are expressly set forth in the Company Agreements.

4. No Liability. Notwithstanding the security interests of the Authority in the Pledged Collateral or any of its rights hereunder, (a) the Authority shall have no obligation or liability whatsoever for matters in connection with the Pledged Equity arising or occurring, directly or indirectly, prior to the Authority's (or its designee's, successor's or assign's) becoming a shareholder, member or partner, as the case may be, of the undersigned, and except to the extent set forth in the Company Agreements, the Pledgor shall have no liability for matters in connection with the Pledged Equity first occurring or arising after the Authority's (or its designee's, successor's or assign's) acquisition through foreclosure of the Pledged Equity, and (b) the Authority shall not be obligated to perform any of the obligations or duties of the Pledgor under any of the undersigned's Organizational Agreements, or to take any action to collect or enforce any claim for payment due the Pledgor arising thereunder.

5. Transfers. The undersigned acknowledges that the security interest of the Authority in the Pledged Collateral and all of the Authority's rights and remedies under the Pledge Agreement may be freely transferred or assigned by the Authority without the consent of the Pledgor or the undersigned. In the event of any such transfer or assignment, all of the provisions of this Agreement and Acknowledgment shall inure to the benefit of the transferees, successors, and/or assigns of the Authority. The provisions of this Agreement and Acknowledgment shall likewise be binding upon any and all permitted transferees, successors and assigns of the undersigned.

6. Further Assurances. The undersigned shall, from time to time, promptly execute and deliver such further instruments, documents and agreements, and perform

such further acts as may be reasonably necessary or proper to carry out and effect the terms of the Pledge Agreement and this Agreement and Acknowledgment.

7. Reliance. This Agreement and Acknowledgment is being given to induce The Authority to accept the Pledge Agreement and with the understanding that the Authority will rely hereon.

8. Counterparts. This Agreement and Acknowledgment may be executed in counterparts.

9. Miscellaneous. The provisions of Article 7 of the Pledge Agreement are hereby incorporated herein by this reference (with all references to the Pledgor therein deemed to mean and refer to the undersigned).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Acknowledgment to be executed and delivered, all as of the day and year first above written.

\_\_\_\_\_, as Pledged  
Entity (the Company)  
By: \_\_\_\_\_,  
its Managing Member

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

**Exhibit B**  
**Organizational Agreements**

## Exhibit C

### Acceptance of the Authority's Proposal under Section 5.06

\_\_\_\_\_, 2011

Hudson County Improvement Authority  
574 Summit Avenue  
Fifth Floor  
Jersey City, New Jersey 07306

Ladies and Gentlemen:

This letter agreement and waiver is being delivered by the undersigned (the "Pledgor") to the Hudson County Improvement Authority (the "Authority") in connection with that certain Pledge and Security Agreement dated as of \_\_\_\_\_, 20\_\_ by the Pledgor in favor of the Authority (the "Pledge Agreement"). All capitalized terms used herein, unless otherwise defined herein, shall have the meanings specified in the Pledge Agreement.

1. As contemplated by Section 5.06 of the Pledge Agreement, the Pledgor hereby accepts the Authority's Strict Foreclosure Proposal to retain all right, title and interest in and to the Pledged Collateral, and agrees to ratify such retention at the direction of the Authority in accordance with such Section 5.06 and the other applicable provisions of the Company Agreements.

2. This acceptance is irrevocable and unconditional, subject, however, to the terms of Paragraph 5 below.

3. All of the Interested Parties acknowledge and consent to the acceptance and agreements set forth in Paragraph 1 and Paragraph 2 hereof.

4. In accordance with Section 9-624(c) of the UCC, each Pledged Entity and each Interested Party, hereby waives, effective as of the date hereof, all of its rights under the UCC with respect to the Facility, the Pledge Agreement and the Pledged Collateral, if any, including any rights described in Section 9-623 of the UCC, in each case to the fullest extent such rights may be waived in accordance with the UCC ("UCC Waiver").

5. Notwithstanding the acceptance and UCC Waiver, the Pledgor and the Authority shall not be required to consummate such retention by the Authority unless and until (a) twenty (20) days have elapsed after the delivery of such acceptance, and (b) none of the Interested Parties have caused the entire Indebtedness to be paid and satisfied in full within such twenty day period (a "Redemption"), and, if a Redemption is consummated pursuant to the terms of the Company Agreements and in accordance

with applicable law, the Pledgor's acceptance shall be deemed to have been revoked with the consent of the Authority.

Very truly yours,

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

**ACKNOWLEDGED AND AGREED:**  
Hudson County Improvement Authority

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