

POWER PURCHASE AGREEMENT

-Between-

SPS SOLAR VII LLC

-and-

HAWAII THEATER CENTER

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (the "Agreement") is made as of _____, 2013 (the "Effective Date"), by SPS SOLAR VII LLC, a Hawaii limited liability company, whose mailing address is P.O. Box 1828, Kailua, Hawaii, 96734 (the "Seller"), and HAWAII THEATRE CENTER, a Hawaii nonprofit corporation, whose mailing address is 1130 Bethel Street Honolulu, Hawaii 96813 (the "Host") (Seller and Host hereinafter sometimes referred to collectively as the "Parties" and individually as the "Party");

RECITALS:

A. Host owns, manages, and operates that certain real property located in the State of Hawaii as more fully described in Exhibit A (the "Property"), which includes one (1) building (collectively, the "Building") that are located in Honolulu, Hawaii, and used by Host. The Property and the Building are hereinafter sometimes collectively referred to as the "Site"

B. Host desires that Seller install, own, operate and maintain an energy System (as hereinafter defined) at the Site to provide electric energy (the "Energy") generated by the System to the Building.

C. Seller desires to sell, and Host desires to purchase, the Energy Services (as hereinafter defined), which include the provision of Energy to the Building and other services pursuant to the terms and conditions set forth in this Agreement.

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

ARTICLE 1. **DEFINITIONS**

1.1 Definitions. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the respective meanings set forth in this Section 1.1; (b) the singular shall include the plural and vice versa; (c) the word "including" shall mean "including, without limitation"; (d) references to "Sections" and "Exhibits" shall be to sections and exhibits hereof; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to this Agreement shall include a reference to all exhibits hereto as the same may be amended, modified, supplemented or replaced from time to time.

Affiliate of any Person means any other Person who directly or indirectly controls, is controlled by or is under common control with such Person. The term "control" (and the correlatives, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

Agreement shall have the meaning set forth in the Preamble.

Applicable Law means, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental

approval, consent or requirement of such Governmental Authority, enforceable at law or in equity, along with the interpretation and administration thereof by any Governmental Authority.

Approval means any and all authorizations, approvals, waivers, exceptions, variances, permissions, filings, permits, orders, licenses, registrations, judgments, written interpretations, decrees, exemptions and declarations of or with or issued by any Governmental Authority or pursuant to any Laws applicable to the ownership, construction, use, operation and maintenance of the System and the performance of the Energy Services.

Building shall have the meaning set forth in the Recitals.

Claim means any claim, legal or equitable cause of action, suit, litigation, proceeding (including a regulatory or administrative proceeding), grievance, complaint, demand, charge, investigation, audit, arbitration, mediation or other process for settling disputes or disagreements, including, without limitation, any of the foregoing processes or procedures in which injunctive or equitable relief is sought.

Commercial Operation Date means the first day, following the Testing Period, on which Energy is delivered from the System to Host, as certified in writing by Seller.

County means the City and County of Honolulu including any Governmental Authority of the County.

Delivery Point shall have the meaning set forth in Section 3.7(c).

Effective Date means the date as of which this Agreement has been executed by both Parties as first identified above.

Electric Utility means Hawaiian Electric Company (HECO) or any successor.

Encumbrances mean any and all liens, charges, security interests, options, mortgages, pledges or other restrictions of title or transfer of any nature whatsoever.

Energy shall have the meaning set forth in the Recitals.

Energy Price shall have the meaning set forth in Section 5.2.

Energy Services means all services provided by Seller to Host hereunder, including arranging for the design, furnishing and installation of the System, the O&M Work and the provision of Energy to the Host at the Site.

Environmental Attributes means the characteristics of electric power generation at the System that have intrinsic value, separate and apart from the Energy, arising from the perceived environmental benefits of the System or the Energy, including but not limited to all environmental and other attributes that differentiate the System or the Energy from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or the compliance of the System or the Energy with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or

federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights.

Environmental Incentives mean all rights, credits (including tax credits), tax depreciation, rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the System or the Energy generated thereby or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Energy generated thereby. Without limiting the foregoing, "Environmental Incentives" includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any incentive programs offered or to be offered by the State where the Property is located and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

Environmental Law means any and all Laws (including common law) regulating, relating to or imposing liability or standards of conduct concerning or relating to the regulation, use or protection of natural resources or the environment, to the protection of human health and safety as related to the environment or exposure to Hazardous Substances, or to releases of Hazardous Substances, or otherwise relating to the generation, use, treatment, storage, disposal, handling or transport of Hazardous Substances, as may have previously been, now are, or may at any time hereafter be, in effect.

Expenses means any and all costs and expenses, including attorney's fees and settlement costs, incurred or sustained in connection with Claims that are the subject of indemnification under this Agreement or Losses or Judgments arising from such Claims.

Expiration Date shall have the meaning set forth in Section 4.1.

Fair Market Value shall have the meaning set forth in Section 4.2(b).

Force Majeure Event means, to the extent not caused by the act or omission of the Party affected thereby and which is beyond the reasonable control of such Party and which cannot be avoided or overcome by the exercise of commercially reasonable efforts, acts of God, war, civil disobedience, embargoes, strikes, lockouts, epidemics, fires, action of the elements, earthquakes, storms, hurricanes, tsunamis, labor, production or transportation disruptions or shortages or accidents to or involving machinery or equipment, shortages of materials, power, fuel, equipment, transportation, or any Law (or its interpretation), order, request, instruction or injunction, or failure to obtain or provide or cancellation of rights-of-way, Governmental Approval, whether valid or invalid, or Government Authority inaction or action not due to the action or inaction of the Party claiming relief, unavailability of fuel, or other cause whether or not similar to the foregoing; provided that a Force Majeure Event shall not include events caused by the negligence or misconduct of the Party claiming the Force Majeure Event. **If** such an event were to occur, the period of the lease shall be extended by the duration of the delay in fulfilling the terms of the contract.

Governmental Authority means any federal, State or County government or political subdivision thereof (whether federal, State or County), any court and any administrative agency or other regulatory body, instrumentality, authority or other entity or official thereof exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

Hazardous Substances means any petroleum or petroleum products, explosives, radioactive materials, asbestos in any form, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), in each case, to the extent regulated under any Environmental Law; and any chemicals, materials or

substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "contaminants" or "pollutants", or words of similar import, under any applicable Environmental Law and any other substances regulated pursuant to any applicable Environmental Law.

Host shall have the meaning set forth in the Preamble.

Host Default shall have the meaning set forth in Section 13.1.

Indemnified Party shall have the meaning set forth in Section 12.3.

Indemnifying Party shall have the meaning set forth in Section 12.3.

Installation Work means all work performed by Seller in connection with the design, furnishing, installation, testing and commissioning of the System.

Interconnection Agreement means the agreement, if any, by Host and the Electric Utility providing for the interconnection of the System with the Electric Utility's system, pursuant to the Electric Utility's applicable tariff rule.

Interconnection Standards means the standards and requirements of the Electric Utility incorporated in the Interconnection Agreement, if any.

Judgment means any judgment, writ, order, injunction or decree of or by any court or Governmental Authority.

kW means Kilowatt.

kWh means Kilowatt-hour.

Lease means the Lease covering the Premises entered into by Seller and Host concurrently herewith.

Liens means any mortgage, indenture, pledge, statutory lien or other type of lien, charge, security charge, encumbrance, financing statement (whether or not filed), security interest, agreement of sale, lease or preferential arrangement of any kind or nature whatsoever intended to assure payment of any obligations, including any conditional sale or other title retention agreement, pledge, hypothecation, assignment, and any financing lease having substantially the same economic effect as any of the foregoing.

Losses means any loss, fine, penalty, assessment, deficiency, interest payment, expense, cost, debt, liability, Lien, Judgment or damages that are sustained or incurred.

Meter shall have the meaning set forth in Section 6.3(a).

Monthly Period means the period commencing on the Commercial Operation Date and ending on the last day of the calendar month in which the Commercial Operation Date occurs, and, thereafter, each subsequent calendar month during the Term.

Monthly Production means, for each Monthly Period, the amount of Energy delivered during such Monthly Period.

O&M Work shall have the meaning set forth in Section 6.1.

Party and Parties shall have the meaning set forth in the Preamble.

Person means any individual, trustee, corporation, general or limited partnership, limited liability company or partnership, joint venture, joint stock company, bank, firm, Governmental Authority, trust, association, organization or unincorporated entity of any kind.

Premises shall have the meaning set forth in Article 2.

Property means the real property on which the Building is located, and includes all building(s) or structure(s) on the Property on which the System is to be installed and on which the Energy Services are to be performed during the Term. The Property is more fully described in Exhibit A.

PUC means the Public Utilities Commission of the State of Hawaii.

Rebates mean any and all present or future federal, State, County or utility rebates or other funding offered for the development of photovoltaic system projects.

Reporting Rights means the right of Seller to report to any Governmental Authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns the Environmental Attributes and the Environmental Incentives associated with the Energy.

Seller shall have the meaning set forth in the Preamble. For purposes of access rights and other rights necessary for Seller to perform its obligations hereunder, the term "Seller" shall include Seller's authorized agents, contractors and subcontractors.

Seller Default shall have the meaning set forth in Section 13.2.

Site shall have the meaning set forth in the Preamble.

State means the State of Hawaii, including any Governmental Authority of the State.

State Incentive means revenue originating from any existing and/or future State legislation and typically administered by electric utilities.

System means the solar energy system designed and installed pursuant to this Agreement at the Site and more fully described in Exhibit B, including any future improvements and advances in such solar energy technology that may replace, or be incorporated into, the solar energy system as provided in Section 6.5; provided, however, that the term "System" shall only include equipment and materials up to but not including the Delivery Point.

Term shall have the meaning set forth in Article 4.1.

Termination Date shall have the meaning set forth in Section 4.1.

Termination Value means, at the time of calculation, an amount equal to the sum of: (i) the value of any existing or then existing Environmental Incentives and Environmental Attributes (including any applicable tax credits) that would have accrued to Seller if the termination of this Agreement did not occur, and (ii) the present value of Host's purchase obligations hereunder with respect to the Energy of

the System for the remaining portion of the Term, which shall be calculated by applying the present value discount to the product of the following: the number of days remaining in the Term times the product of (x) the Energy Price that Host would otherwise pay for such Energy pursuant to Section 5 times (y) the Average kWh Output. For purposes of this definition, "Average kWh Output" means the daily average number of kWh of Energy actually delivered to Host from the System beginning on the Commercial Operation Date through the date of termination of this Agreement. If termination of this Agreement occurs prior to the date that is one (1) full year after the Commercial Operation Date, for purposes hereof, it shall be assumed that the "Average kWh Output" of the System during such partial year was the actual daily number of kWh of electric energy consumed by the Host's Building for the prior 12-month period (from the Electric Utility and any other source) divided by 365 days. The present value discount shall be equal to the lesser of six percent (6%) or the prevailing prime rate of interest as published in *The Wall Street Journal* on the day preceding the date of termination of this Agreement. Host's liability for payment of the Termination Value may be partially mitigated to the extent that Seller, in its sole discretion, is able to enter into alternative arrangements with another power purchaser to install the System at another Property and sell the energy output therefrom to the substitute power purchaser.

Testing Period means the period of time just prior to the Commercial Operation Date during which the Project is initialized and tested as provided hereunder.

Third Party means a Person other than a Party to this Agreement.

ARTICLE 2. **LEASE OF THE PREMISES**

The Parties are, concurrently with this Agreement, entering into the Lease, whereby Host is leasing to Seller, during the Term, certain portions of the Building and the Property as are more particularly described in the Lease (such portions, collectively, the "Premises") on which the System will be located, including full rights of access and egress to, from, across, over, under and on the Building and the Property in order to obtain access to the Premises, and full rights to use, occupy, improve, operate and maintain certain portions of the Building and the Property, to enable Seller to provide the Energy Services to Host pursuant to this Agreement.

ARTICLE 3. **THE ENERGY SERVICES; INSTALLATION; TESTING; FINANCING**

3.1 Purchase and Sale of Energy Services. Host engages Seller to provide the Energy Services to Host at the Site, and Seller agrees to provide such Energy Services, in accordance with the terms and conditions of this Agreement and the Lease. Seller may retain one or more contractors or subcontractors to fulfill its obligations hereunder, provided that any breach of this Agreement by a contractor or subcontractor shall be deemed to be the Seller's breach, including for the purpose of indemnification under Article 12 of this Agreement.

3.2 Installation. Subject to Sections 3.3 and 3.4, Seller will cause the System to be installed and constructed substantially in accordance with the terms of this Agreement. Seller will purchase the system from Hawaii Energy Connection LLC ("HEC") and HEC will install, maintain, and service the system for the term of the PPA. Host shall have the right to review and approve, such approval not to be unreasonably withheld or delayed, all construction plans, including engineering evaluations of the impact of the System on the structural integrity and strength of the location(s) where the System is installed on or near the Building. Seller shall organize the procurement of all materials and equipment for the Installation Work and maintain the same at the Property. Seller shall perform the Installation Work at the Site as allowed by the Host and coordinate the installation with the scheduled building renovations

planned for July 2013. The buildings consist of the residences of their occupants. Therefore, Seller, in cooperation with the Host's designated representatives, will make every effort to eliminate damage or disruption of unit occupants while performing the work. Any costs incurred due to any damage to Host's facilities on the Site shall be paid entirely by Seller. The System is more fully described in Exhibit B.

3.3 Approvals. Seller (and Host, to the extent applicable) shall obtain all Approvals required by Applicable Law to be obtained by Seller (and/or Host) prior to commencing the Installation Work. Seller shall apply for and obtain all Approvals required for the installation, operation and maintenance of the System, and Host shall assist Seller in obtaining such necessary Approvals.

3.4 Electric Utility Approvals. If the System is to be interconnected with the Electric Utility's system, then Seller (and Host agrees to assist Seller in this effort) shall submit an application for any such required interconnection with the Electric Utility. Host shall not make any material changes to its electrical equipment at the Site after the date on which the Electric Utility's interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. If the Electric Utility's approval is required hereunder but the Electric Utility fails to approve the interconnection of the System at the Site or require equipment in addition to the equipment set forth in Exhibit B in connection with the Site, Seller may, at Seller's option, terminate this Agreement immediately subsequent to notification from the Electric Utility without triggering the default provisions of this Agreement or any liability under this Agreement. If any work has begun at the time of termination, Seller shall restore the Property to its original condition, ordinary wear and tear excepted.

3.5 Start-up and Testing of the System. Upon completion of the Installation Work, Seller shall so inform Host and Seller shall undertake performance testing and start-up operations of the System during the Testing Period in preparation for the delivery of Energy to Host.

3.6 Commercial Operation Date.

(a) Commencement of Commercial Operation. Upon completion of the Testing Period, Seller shall commence the commercial operation of the System, and shall give Host written notice of the Commercial Operation Date.

(b) Commercial Operation Date. As of the Commercial Operation Date, all of the following shall have occurred: (i) Seller shall have certified to Host that the System is substantially complete and available for commercial operation, (ii) all Approvals required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect, and (iii) if required, Host shall have entered into an Interconnection Agreement with the Electric Utility. In no event shall Seller have any liability to Host for a delay in the Commercial Operation Date.

(c) Host Rebate Assistance. If a Rebate of the System is then in effect, or in the future enters into effect, for which Seller is eligible, Host shall take all reasonable measures to assist Seller in obtaining all Rebates that are available or subsequently made available in connection with the System installed at the Site.

3.7 Ownership of the System; Risk of Loss; Restrictions on Host's Access.

(a) Seller shall at all times retain title to and be the legal and beneficial owner of record of the System, including all of its equipment, ancillary items, all know-how and intellectual property related thereto, and the right to any tax credits available under federal or State Law, and shall bear the risk of loss of the same. Host shall not have any right, title or interest, whether equitable or otherwise, in and to the System or any portion thereof.

(b) Seller, as owner, shall therefore bear the risk of loss of the System.

(c) Seller shall have, and be deemed to have, exclusive control (and be responsible for any property damage or injuries to Persons caused thereby) of the Energy up to but excluding the point where the System is interconnected to Host's electrical intertie (the "Delivery Point") to the Building, and Host shall have, and be deemed to have, exclusive control (and be responsible for any property damage or injuries to Persons caused thereby) of the Energy at and from the Delivery Point. Risk of loss related to the Energy will transfer from Seller to Host at the Delivery Point.

(d) Host shall not directly or indirectly interfere with, tamper, seek to operate or otherwise handle any portion or all of the System, and shall take reasonable steps to ensure that no Third Parties, including Host's own employees, clients, or invitees, have access to the System, except that trained and authorized personnel of Host and/or Third Parties retained by Host as well as public security or safety officials may be granted access to the System in emergency situations. Host shall, to the extent practicable, physically restrict access to the System. Notwithstanding the foregoing, Host shall have the right to take certain actions in an emergency situation affecting Host's facilities on the Site as set forth in Section 6.2(d). If any work will be performed, or any other activities will take place that might adversely affect the System and its performance, Host will notify Seller of such activities.

(e) As long as Seller owns the System, Seller may, at its option, file a UCC-1 Financing Statement in the Bureau of Conveyances of the State and/or in the appropriate filing office in any other State or jurisdiction evidencing its security interest in the Energy System and/or this Agreement.

3.8 Financing of the Project.

(a) The Parties understand that financing has been secured for the System.

(b) Host understands and acknowledges that Seller may finance the System and that a financing party may require approval of this Agreement and, in order to receive such approval, this Agreement may need to be amended or modified. Host agrees that Seller, with Host's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, may (i) grant a security interest in, mortgage and/or otherwise encumber the System, and (ii) transfer or assign its rights under this Agreement as collateral security for amounts payable under any security agreement, loan documents or other financing arrangement (or any refinancing thereof) under which Seller has borrowed money, provided that:

(i) As long as this Agreement is in effect, all of Host's rights under this Agreement shall not be superseded or prohibited by any contradictory provision in any mortgage, security instrument, or loan documents; and

(ii) In the event of any default by Seller under any loan documents, mortgage, security instrument, Liens or Encumbrances, notice of such default shall be given to Host and

Host shall have the right to cure any such default within forty-five (45) days after receipt of such notice by any financing party with respect to any default that can be cured by the payment of money, or within sixty-five (65) days with respect to any other covenant, term or condition.

(c) Host agrees to execute all documents, and to give its consent, as Seller and/or the financing party or parties may reasonably request, in connection with such financing, subject to the provisions of this Section 3.8.

(d) In connection with such financing, Seller or the party providing such financing shall file a UCC-1 Financing Statement in the Bureau of Conveyances of the State and/or in the appropriate filing office in any other State or jurisdiction evidencing the security interest in the Energy System and/or this Agreement.

ARTICLE 4. **TERM; HOST OPTIONS; TERMINATION**

4.1 Term. This term of this Agreement shall commence on the Effective Date and shall expire on the date (the "Expiration Date") that is twenty (20) years after the Commercial Operation Date subject to a minimum of 3,612,357 kWh of billed Energy (the "Term"), unless sooner terminated pursuant to Sections 3.4, 4.5, 4.7, 6.8, 6.9 or 13.3 (the date of any such termination, the "Termination Date").

4.2 Host Options Upon the Expiration of the Term.

(a) Option to Extend the Term. Provided that no Host Default shall have occurred and is continuing, Host shall have the option to extend the term of this Agreement for one (1) additional ten (10)-year period. Host shall exercise this option, if it so chooses, by giving Seller prior written notice of such exercise at least one-hundred eighty (180) days prior to the Expiration Date. If Host exercises this option, then the Parties will discuss and agree upon any amendments within the 180 day period prior to the Expiration Date. If agreement is reached by the Expiration Date, the Term shall be extended from the Expiration Date for one additional ten (10) year period, subject to the terms and conditions of the Agreement and any amendments agreed to by the Parties.

(b) Option to Purchase the System on the Expiration Date. Provided that no Host Default shall have occurred and is continuing and if Host has not elected to extend the term of this Agreement in accordance with Section 4.2(a), Host shall have the option to purchase the System on the Expiration Date (or such other date as mutually agreed by the Parties) by paying Seller the lesser of the Fair Market Value or three percent (3%) of the System install cost prior to or on the Expiration Date. Host shall exercise this option, if it so chooses, by giving Seller prior written notice of such exercise at least one-hundred and eighty (180) days prior to the Expiration Date. The "Fair Market Value" of the System shall be the value determined by the mutual agreement of Host and Seller within ten (10) days after receipt by Seller of Host's notice of its election to purchase the System. If Host and Seller cannot mutually agree to a Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar energy industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the Seller will transfer to the Host the remaining period, if any, on all warranties for the System at Host's sole expense. If the Parties are unable to agree on the selection of an appraiser, then Host and Seller shall each appoint an appraiser firm, and the two (2) firms shall jointly select a qualified third party appraiser to determine the Fair Market Value. Upon receipt by Seller of payment of the Fair Market Value, title to the System as well as Environmental

Attributes and Environmental Incentives shall transfer to Host as-is, where-is. If Host does not exercise such option to purchase the System, Seller shall remove the System pursuant to Section 4.6. Removal of the System will include removal of the panels and inverters; it shall not include removal of the penetrations or fixtures.

4.3 Consent of Financing Parties. If Seller obtains financing for the System at any time prior to the expiration or termination of the Term, then the exercise by Host of the option to purchase under Sections 4.2(b) or 4.3 shall be subject to the terms of the financing documents, and may require and be subject to the consent and agreement of the financing party (or parties if there be more than one).

4.4 Payment of Termination Value on Termination Date. If the Termination Date has occurred, Host shall be required to pay to Seller the Termination Value as liquidated damages. The Parties agree that actual damages to Seller in the event the Termination Date occurs for causes attributable to Host would be difficult to ascertain, and the Termination Value is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. Seller shall transfer all of its ownership rights in and to the System to Host upon payment in full of the Termination Value.

4.5 Seller Termination. Seller shall have the right, in Seller's sole and absolute discretion, to terminate this Agreement upon written notice to Host:

- (a) at any time until commencement of the Installation Work hereunder at the Site;
- (b) if a Governmental Authority issues an order, which is not stayed or dismissed, which has the effect of subjecting the sales of Energy to federal or State regulation of prices and/or service;
- (c) if the Electric Utility fails to approve the interconnection of the System at the Site or requires additional equipment and Seller exercises its right to terminate under Section 3.4;
- (d) if Seller has determined that it needs to obtain financing for the System but is unable to obtain such financing, or consents thereto, and exercises its right to terminate under Section 3.8;
- (e) if Seller has determined that any required removal, relocation and reinstallation of the System under Section 6.8 renders the System to be commercially unreasonable and economically unsustainable;
- (f) if Seller has determined that any substantial and permanent decrease in Host's demand for Energy Services under Section 6.9 renders the System to be commercially unreasonable and economically unsustainable;
- (g) in the event of a casualty pursuant to Section 15.1; or
- (h) in the event of a taking pursuant to Section 15.2.

4.6 Removal of the System upon Expiration or Termination of the Term. Upon the expiration or sooner termination of the Term, if Host has not duly exercised the option to purchase the System (if such option is applicable in the circumstances involved), Seller shall, at its own expense, remove all of the panels and inverters comprising the System from the Site by a mutually convenient date but in no case later than one hundred and eighty (180) days after the Expiration Date (or Termination Date, as applicable), return the Site to its original condition, ordinary wear and tear excepted, and leave the Site in neat and clean order; provided, however, that if Seller has terminated this Agreement pursuant to Section

13.3(b), then Host shall pay the costs incurred by Seller in removing the System from the Site. As set forth in Article 4.2(b), removal of the System does not include removal of the penetrations or fixtures.

4.7 Host's Option to Purchase the System Prior to the Expiration Date. At any time after the sixth (6th) anniversary of the Commercial Operation Date, provided that no Host Default shall have occurred and is continuing, Host may elect to purchase the System. If Host elects to so purchase the System, the purchase price shall be the greater of the then Fair Market Value or the Termination Value. If Host elects to exercise its option to purchase, Host shall provide written notice to Seller of Host's exercise thereof not less than one-hundred-and-eighty (180) days prior to such sixth (6th) anniversary date. Upon the exercise of the foregoing purchase option plus receipt of the Fair Market Value or Termination Value, as applicable, and all other amounts then owing by Host to Seller, the Parties will execute all documents necessary to cause title to the System to pass to Host as-is and where-is, provided, however, that Seller shall remove any Encumbrances placed on the System by Seller. This Agreement and the Site Lease shall automatically terminate upon Host's purchase of the System.

ARTICLE 5.

ENERGY PURCHASE; ENERGY PRICE; AND PAYMENTS

5.1 Purchase Requirement. Host shall purchase one hundred percent (100%) of the Energy generated by the System during the Term at the Site. While the Energy Services are calculated and billed on the basis of kWh of Energy as set forth in Section 5.2, Host acknowledges and agrees that such Energy Services represent a package of services including the production and supply of Energy output from the System, the O&M Work and monitoring associated with solar energy production that Seller may provide to Host. The payment for the Energy Services is calculated to include all of the above services in the price per kWh of Energy provided to the Building through the System.

5.2 Energy Price. For each month during the Term, Host shall pay to Seller for the Energy provided pursuant to this Agreement the amount (the "**Energy Price**") that is equal to (i) \$0.22 per kWh (the "**Energy Rate**"), with an annual escalation rate of three percent (3%) plus (ii) any additional amount required pursuant to Section 5.4. For avoidance of doubt The Energy Rate escalation date will become effective upon the anniversary of the Commercial Operation Date with rate specifications set forth in Exhibit C

5.3 Taxes. In addition to the Energy Price and all other charges payable by Host to Seller hereunder, Host shall pay to Seller, together with each payment of the Energy Price, an amount equal to the amount, if any, payable by Seller pursuant to the State general excise tax Law or any successor or substitute Law based on gross income actually or constructively received by Seller under this Agreement, together with any interest or penalties assessed thereon, but excluding all taxes based on or measured by net income. Host shall also pay, and hold harmless Seller from, any sales and use taxes arising upon the transfer, if any, of both legal and beneficial ownership of the System to Host pursuant to this Agreement. Seller will pay, and hold harmless Host from, any real property taxes assessed on that portion(s) of the Site upon which the System is located. If Host shall be required to by Applicable Law to withhold or deduct any taxes imposed by State or other Government Authority from or in respect of any sum payable hereunder, the sum payable shall be increased as may be necessary so that, after making all required deductions, Seller shall have received an amount equal to the sum it would have received had no such deductions been made.

5.4 Billing and Payment. Billing and payment for the Energy Services sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as follows:

(a) Billing and Payments. Host shall pay for the Energy delivered to Host during each Monthly Period hereunder the Energy Price as set forth in Section 5.2. Payment is due within ten (10) days of receipt of the Seller's invoice. Seller shall read each Meter at the beginning of each month and send to Host an invoice for the Energy provided to Host during the prior month. All invoices shall show the amount of Energy provided to the Site, the applicable Energy Price, plus any applicable taxes.

(b) Authorization for Electronic Billing and Payment To facilitate billing for and payment of the monthly Energy Price for Energy delivered to Host, Seller authorizes Host to satisfy its payment obligations hereunder by electronic billing and funds transfers from Host's designated bank account. Host authorizes Seller to electronically debit Host's designated bank account. Host shall execute the "Authorized Agreement For Direct Payments" form provided by Seller.

(c) Invoice Errors. Within thirty (30) days after receipt of any invoice, Host may provide written notice to Seller of any alleged error therein. Host shall pay all undisputed amounts, including the undisputed portion of any invoice in accordance with Section 5.5(a). If Seller notifies Host in writing within thirty (30) days of receipt of such notice that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within ten (10) days of Host's response for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) days after such initial meeting, such dispute shall be resolved pursuant to Article 14.

(d) Late Payments. All payments hereunder shall be made without set-off or deduction. Any payment not made within the time limits specified in Section 5.5(a) shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by the Seller. Such interest shall accrue at a monthly rate equal to the lesser of the then prevailing prime rate of interest as published in *The Wall Street Journal* or the maximum interest rate permitted by Applicable Law.

5.5 Environmental Attributes, Etc. The Parties acknowledge that existing and future Law may create value in the ownership, use or allocation of Environmental Attributes, Environmental Incentives or Reporting Rights that would benefit Seller in respect of the System. To the full extent allowed by such Applicable Law, Seller shall own or be entitled to claim all Environmental Attributes, Environmental Incentives or Reporting Rights related to the System. To the extent necessary or desirable and at Seller's request and expense, Host shall execute such documents necessary to assign to, or otherwise evidence in, Seller all right, title and authority for Seller to register, own, hold and manage the same in Seller's own name and to Seller's account, including any rights associated with any Environmental Attributes, Environmental Incentives (other than federal and State tax credits) or Reporting Rights information or tracking system that may be established with regard to monitoring, tracking, certifying or trading such credits. Upon sale of the system to the Host, all Environmental Attributes, Environmental Incentives or Reporting Rights related to the System will be owned by the Host.

5.6 Tax Credits, Etc. Seller will at all times retain all tax credits and depreciation associated with the System.

5.7 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Seller to dedicate its property to public use or subject itself to regulation as a "public utility" (as defined in the Haw. Rev. Stat. Chapter 269 or any other Applicable Law). Neither Party shall claim that by this Agreement Seller is an electric utility subject to regulation as an electric utility or subject to regulated electricity rates. Seller shall not claim to be providing electric utility services to Host and shall not interfere with Host's ability to continue to obtain electric energy from the Electric Utility.

5.8 Bonding. If a performance and completion bond is required by Host, Host will reimburse Seller for the premium charged by the bonding company to issue the required bond.

ARTICLE 6.
OPERATION AND MAINTENANCE OF THE SYSTEM

6.1 O&M Work. HEC or other entities acceptable to Host, at the sole cost and expense of the Seller, shall provide operation, repair, monitoring and maintenance services to the System during the Term, including the monitoring and maintenance of metering equipment to determine the quantity of Energy produced by the System (collectively, the "O&M Work"). HEC or other entities acceptable to Host, at the sole cost and expense of the Seller, shall perform the O&M Work to ensure that the System is capable of delivering Energy in accordance with the specifications set forth in Exhibit B.

6.2 Malfunctions and Emergencies.

(a) Each of Host and Seller shall notify the other within twenty-four (24) hours following the discovery by it of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of Energy Services. Seller and Host shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Seller and Host each shall notify the other Party immediately upon the discovery of an emergency condition in a System.

(b) Seller shall commence repairs to any malfunctioning item of the System and restore the supply of Energy as soon as reasonably possible after notice or upon its own discovery of any of the conditions specified in Section 6.2(a) during normal business hours and, subject to Section 3.1, take steps to mobilize personnel to commence repairs after notice or discovery of a condition requiring repair or other corrective action. If an emergency condition exists, Seller shall dispatch the appropriate personnel immediately upon becoming aware thereof to perform the necessary repairs or corrective action in an expeditious and safe manner. The Parties may also contact the persons set forth below:

SPS SOLAR VII LLC
Attn: Scott LaRue
P.O. Box 1828
and/or 792 Mokapu Road
Kailua, HI 96734
Tel: (808) 330-9000
Fax: (808) 550-1099
sjlarue@gmail.com

(c) Any costs incurred due to physical damage to Host's facilities on the Site resulting from System malfunction shall be paid by Seller.

(d) Notwithstanding anything to the contrary in this Agreement, if an emergency condition arises in or affecting the Premises, the Building and/or Host's facilities on the Site that requires immediate action by Host, Host shall have the right to de-energize the System in order to effectuate repairs or other actions to remedy, alleviate or remove such emergency condition. Host shall, as soon as practicable in such emergency situation, notify Seller of such emergency and the actions that Host has taken and/or proposes to take that affect or could affect the System. Host shall, as appropriate, assist Seller with respect to the System to the extent reasonably required or desired by Seller in the circumstances involved.

6.3 Metering.

(a) Maintenance and Testing. Seller shall install and maintain on the Premises for the System, Enphase Envoy Communication Gateways (each a “**Meter**”) for the measurement of Energy produced by Seller at the Property. Upon Host’s written request, Seller shall furnish a copy of all technical specifications for the Meters, as well as all metering data and energy production calculations. Host shall provide Seller with a dedicated internet connection for connection to the Enphase Envoy Communication Gateway to transmit data to the Seller. Host will have access to the data center.

(b) Host Audits and Inspections. Once each calendar year during the Term, Host shall have the right to audit all Meter data upon reasonable notice, and any such audit shall be at Host’s sole cost. Host shall have a right of access to the Meter at reasonable times and with reasonable prior notice to Seller for the purpose of verifying readings.

6.4 Outages. The Parties recognize that the delivery of Energy from the System to Host may be temporarily interrupted but only under the following conditions (excluding Force Majeure Events):

(a) By the Electric Utility. The Parties acknowledge that the Electric Utility may require Host or Seller temporarily to curtail, interrupt or reduce delivery of Energy from the System to the Building (i) when necessary for the Electric Utility to construct, install, maintain, repair, replace, remove or inspect any of the Electric Utility’s equipment or electric system on the Site or affecting the Building, or (ii) if the Electric Utility determines that such curtailment, interruption or reduction is necessary because of an Electric Utility system emergency, forced outage or compliance with the Electric Utility’s good engineering practices affecting Electric Utility’s system. The occurrence of any such curtailment, interruption or reduction shall not cause any Party to be in default hereunder with respect to any obligation of a Party. Each of the Parties shall take reasonable steps to minimize any adverse impacts of any such curtailments, interruptions or reductions on the System or the Building. Each Party shall not be liable to the other Party for any Loss of revenue or other costs incurred or sustained by such Party as a result of any such curtailment, interruption or reduction caused by the Electric Utility.

(b) By Seller. Seller may temporarily curtail, interrupt or reduce delivery of Energy from the System to Host when necessary to maintain, repair, replace, remove or inspect the System as part of Seller’s regular scheduled maintenance (each, a “Seller Scheduled Outage”) at the Premises for each calendar year during the Term, during which period Seller shall not be obligated to deliver, and Host shall not be obligated to accept or pay for, Energy; provided, however, that Seller shall, except in emergency situations, notify Host in writing of each such Seller Scheduled Outage at least forty-eight (48) hours in advance of the commencement of such Seller Scheduled Outage. Seller shall seek to minimize the occurrence and duration of any such curtailment, interruption or reduction as much as practicable, consistent with prudent safety and operating standards and requirements.

(c) By Host. Host may shut down, or otherwise disconnect and/or de-energize, the System as Host deems necessary to maintain, repair, replace, remove or inspect the Site or the Building as part of Host’s regular scheduled maintenance or if a malfunction or emergency situation arises involving the Building, the Site or the System, as described in Section 6.2(d) (each, a “Host Outage”) at the Site for each calendar year during the Term, during which period Host shall not be obligated to accept or pay for, and Seller shall not be obligated to deliver, Energy; provided, however, that Host shall, except in emergency situations, notify Seller in writing of each such Host Outage at least forty-eight (48) hours in advance of the commencement of such Host Outage. Host shall seek to minimize the occurrence and duration of any such curtailment, interruption or reduction as much as practicable, consistent with prudent safety and operating standards and requirements.

(d) Extension of Lease Period. If the System is de-energized for a period of time exceeding one billing day, either due to Force Majeure Events, equipment failure not caused by any fault of Seller, or for one of the reasons set forth in Article 6.4(a) through (c), the period of the lease and PPA shall be extended by the duration of the delay. Seller will inform Host in writing of lease period extension.

6.5 Upgrades of the System. The Parties acknowledge that the System, and the manner of providing the Energy Services, may, during the Term, be improved and even superseded by technological innovations and developments, and that it may be mutually beneficial to the Parties if such improvements, innovations and even new advanced system were incorporated into the System or replaced the System. If such innovations and improvements occur during the Term that Seller desires to incorporate into the System, or replace all or portions of the System, that would (i) enhance the quality of the Energy Services being provided to Host without creating any new obligations for Host hereunder and (ii) not expand the size of the System, Seller shall have the option to incorporate such innovations and/or replace the System or portions thereof, provided, however, that Seller shall pay the costs thereof and shall obtain all required permits. Prior to taking any action, Seller shall inform Host of the proposed change, its nature and its advantages, and shall make such change only if Host agrees in writing to such change.

6.6 Hazardous Substances. For the purposes of applicable Environmental Laws, Host shall be deemed to have control and management of the Site with respect to then existing conditions.

6.7 Sale of Energy to Third Parties. Host shall not have the right to sell Energy from the System to any Person without the prior written consent of Seller; provided, however, that Host can seek reimbursement of its actual energy costs without Seller's authorization.

6.8 Relocation of the System. Seller acknowledges that the System is installed over, under and adjacent to existing facilities on the Site and that repairs to and maintenance on, and replacement and possible relocation of, those facilities may be required by Host. If any of these events occur, Seller shall remove, relocate and reinstall the System, or any portion(s) thereof, as may be required, at no cost to Host; provided, however, that that if Seller reasonably determines that the costs and/or circumstances, of such removal, relocation and reinstallation are so substantial as to render the same to be commercially unreasonable and economically unsustainable, then Seller shall have the right to terminate this Agreement, and Article 4.6 shall apply unless Host elects to purchase the System, in which case Article 4.2 shall apply. Host shall use commercially reasonable efforts to schedule all work in a manner that does not become unduly burdensome or cost prohibitive to Seller, and shall use commercially reasonable efforts to minimize the occurrence or the extent of any circumstance requiring removal, relocation or reinstallation of the System.

6.9 Change in Host's Demand for Energy Services. If Host should change its operations that use or benefit from the Energy Services in such a manner that substantially and permanently changes Host's need for and use of the Energy Services, Host shall, to the extent practicable, provide Seller with advance written notice of any such permanent change. If such change increases the demand for Energy Services, then Host and Seller shall discuss whether Seller can, through an expansion of the System, help to meet such increased demand, and shall take any further action as they mutually agree; provided that any expansion of the System must be agreed to in writing by Host. If such change decreases the demand for Energy Services, then Seller shall have the right to redesign the System (including reducing the System's size and/or capacity) or to remove, relocate or reinstall the System or portion(s) thereof as a result of such reduced demand, all at Seller's sole expense. If, however, Seller reasonably determines that the decrease in demand is so substantial that the continued operation of the System is commercially unreasonable and economically unsustainable, then Seller shall have the right to terminate this

Agreement, and Article 4.6 shall apply unless Host elects to purchase the System, in which case Article 4.2 shall apply.

ARTICLE 7.
INTERCONNECTION STANDARDS AND FEED IN TARIFF

The Parties acknowledge and understand that if they are required to meet the Electric Utility's Interconnection Standards concerning protective equipment, inspection and maintenance, insurance, metering, liability and procedures to be followed regarding interconnecting the System with the Electric Utility's system, then Host shall be required to enter into an interconnection agreement with the Electric Utility, and Seller will cooperate with Host in this respect as Host and the Electric Utility may reasonably request.

ARTICLE 8.
COVENANTS AND OBLIGATIONS

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

(a) Approvals. Seller shall obtain, maintain and comply with all Approvals required for the performance of the Energy Services. Seller shall deliver copies of all Approvals obtained pursuant to this Section to Host at Host's request. Host shall provide Seller with such assistance and cooperation as may be reasonably requested in order to obtain and maintain all such Approvals.

(b) Liens. Seller shall not permit any Lien to be filed or otherwise imposed on the System, the Premises, the building, the site, or this Agreement except as is expressly provided herein. If Seller breaches its obligations under this Section, it shall immediately notify Host in writing, shall promptly cause such Lien to be discharged and released of record without cost to Host, and shall defend and indemnify Host against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Health and Safety. Seller shall take all reasonably necessary safety precautions in providing the Energy Services and shall comply in all material respects with all Applicable Law pertaining to the safety of persons and real and personal property.

(d) Seller's Records. Seller shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy of measurements, calculations, maintenance records, changes, and any statements of cost relevant to this Agreement. Host shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of measurements, calculations, maintenance records, changes, and any statements of costs relating to transactions hereunder.

(e) Seller to Act as Independent Contractor. Seller, and any of its employees, agents and subcontractors, shall undertake its performance hereunder as an independent contractor and not as officers, employees or agents of Host.

(f) Notice of Damage. Seller shall promptly notify Host of any matters of which it becomes aware pertaining to any damage to or loss of the use of all or any part of the System or that could reasonably be expected to adversely affect the System or the Premises.

(g) Maintenance of Interconnection. Seller shall ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to Seller's electrical system during the entire Term, except as permitted under Articles 6.4(b) and Article 9.2.

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

(a) Approvals. Host shall obtain and maintain, and secure and deliver to Seller copies of all Approvals relating to the performance of Host's obligations and the rights granted by Host hereunder, and that are required by the terms, conditions or provisions of any restriction or any agreement or instrument to which Host is a party or by which Host is bound, including any such arrangements with the Electric Utility. Host shall use best efforts to assist Seller in fulfilling Seller's responsibilities under Section 8.1(a).

(b) Liens. Host shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein or the Premises. Host also shall pay promptly before a fine or penalty may attach to the System any taxes, charges or fees of whatever type of any relevant Governmental Authority for which Host is responsible. If Host breaches its obligations under this Section, it shall immediately notify Seller in writing, shall promptly cause such Lien to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Health and Safety. Host shall at all times maintain the areas of the Site within its control consistent with all Applicable Laws pertaining to the health and safety of persons and property.

(d) Host Records. Host shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Seller shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

(e) Security. Host shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.

(f) Notice of Damage. Host shall promptly notify Seller of any matters of which it becomes aware pertaining to any damage to or loss of the use of all or any part of the System or that could reasonably be expected to adversely affect the System or the Premises.

(g) Maintenance of Interconnection. Host shall ensure that all of the facilities to which Energy is delivered hereunder remain interconnected to Host's electrical system during the entire Term, except as permitted under Articles 6.2 and 6.4 and Article 9.2.

(h) Access. To the extent applicable, Seller shall provide commercially reasonable assistance to Host, upon Host's request, in seeking to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of the sunlight to the System. Host shall not take any action or permit any use of the common elements at Waimalu Park that would wholly or partially block, reduce access for, or overshadow the sunlight from or to the System, whether temporary or permanent.

(h) Site Condition. The Parties acknowledge that Host shall keep and maintain the Site, including the rooftop area comprising the Premises, in good and serviceable condition for the System as set forth in the Lease.

ARTICLE 9. INSURANCE; FORCE MAJEURE EVENTS

9.1 Insurance Requirements.

(a) Seller's Insurance. Seller shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance and property damage, in a minimum amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement. The minimum coverage amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Seller, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with federal and State Applicable Law. Within thirty (30) days after execution of this Agreement and annually during the term of the Agreement thereafter, Seller shall deliver to Host certificates of insurance evidencing such coverage. The insurance certificates shall designate the Host and Hawaiiana Management Company, Ltd. as an additional insured.

(i) Seller's contractors and subcontractors will provide Accord certificates of insurance naming Host and Hawaiiana Management Company, Ltd. as additional insureds. The minimum limits for commercial general liability insurance shall be one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Worker's compensation insurance coverage shall be in accordance with federal and State Applicable Law.

(ii) Seller shall provide and maintain "all-risk" property insurance concerning the System installed on the Premises during installation of the System.

(b) Host's Insurance. Host shall provide and maintain "all-risk" property insurance covering the System installed on the Premises during all periods (except during installation) and naming Seller and its lender as the loss payee. Within thirty (30) days after execution of this Agreement and upon Seller's request annually thereafter, Host shall deliver to Seller certificates of insurance evidencing such coverage, which shall specify that Seller shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Host's insurance shall be primary coverage without right of contribution from any insurance of Seller.

9.2 Force Majeure Events. If either Party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such Party shall notify the other Party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement to the extent that such Force Majeure Event has interfered with such performance. The Party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use its commercially reasonable efforts to remedy its inability to perform. If a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a Seller Default or a Host Default, as the case may be. Notwithstanding anything in this Section 9.2 to the contrary, no payment obligation of Host under this Agreement may be excused or delayed as the result of a Force Majeure Event. In case a Force Majeure Event continues for at least one month, then either Party may terminate this Agreement with

respect to such Site by written notice to the other. If neither Party moves to terminate the PPA and Lease, the period of the PPA and Lease will be extended by the duration of the delay.

ARTICLE 10.
SALE OF THE SITE

If Host, during the Term, sells or otherwise transfers all or any portion of the Site on top of which the System is located, Host shall inform Seller in advance of such sale or transfer (which Seller shall keep confidential if Host so requests) and shall introduce Seller to the new owner. If the nature of such transfer or sale is such that the new owner has the right not to accept or continue in force this Agreement, then Host shall so inform Seller and Host shall use its best efforts to obtain the new owner's agreement to continue this Agreement. If the new owner elects not to do so, Host will pay to Seller the Termination Value.

ARTICLE 11.
REPRESENTATIONS AND WARRANTIES OF SELLER AND HOST

11.1 Seller represents and warrants to Host that:

(a) Corporate Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the Applicable Law of the State of Hawaii.

(b) Authority. Seller has the requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement by Seller have been duly authorized by, or are in accordance with, its organic instruments, and this Agreement has been duly executed and delivered for it by signatories so authorized, and it constitutes the valid and binding obligations of Seller enforceable against Seller in accordance with its terms, subject to enforcement of applicable bankruptcy, insolvency, reorganization and other Applicable Law of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) No Violation. The execution, delivery and performance of this Agreement will not constitute, nor with notice or lapse of time or both constitute a breach of, or default under, any Contract or Judgment to which Seller is a party or is subject or by which it or its properties may be bound or affected.

(d) Notices or Approvals of Third Parties. There are no notices, filings, declarations or registrations required to be made with, or Approvals to be obtained from, any Governmental Authority or other Person in connection with the execution, delivery and performance of this Agreement or which could materially and adversely affect Seller's ability to perform its obligations hereunder.

(e) Litigation and Claims. There are no Claims pending or threatened or asserted against Seller which, if adversely decided, would prohibit or adversely affect Seller's ability to undertake the Project and to perform its obligations hereunder.

(f) No Brokers. Seller shall have no obligation to pay any broker's, finder's, investment banker's, financial advisor's or similar fee or expense in connection with the execution or performance of this Agreement.

(g) Furnish Notice of Adverse Events. Seller shall provide Host with prompt written notice of any event which, to Seller's knowledge, makes any of Seller's representations and warranties in

Article 8 untrue or inaccurate, except where such does not result in or cause a material adverse effect upon Seller's ability to perform its obligations under this Agreement.

11.2 Host represents and warrants to Seller that:

(a) Corporate Organization. Host is a Hawaii domestic nonprofit corporation duly organized, validly existing and in good standing under the Applicable Law of the State of Hawaii.

(b) Authority. Host has the requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement by Host have been duly authorized by, or are in accordance with, its governing documents, and this Agreement has been duly executed and delivered for it by signatories so authorized, and it constitutes the valid and binding obligations of Host enforceable against Host in accordance with its terms, subject to enforcement of applicable bankruptcy, insolvency, reorganization and other Applicable Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) No Violations. The execution, delivery and performance of this Agreement will not constitute, nor with notice or lapse of time or both constitute a breach of, or default under, any Contract or Judgment to which Host is a party or is subject or by which it or its properties may be bound or affected.

(d) Notices or Approvals of Third Parties. There are no notices, filings, declarations or registrations required to be made with, or Approvals to be obtained from, any Governmental Authority or other Person in connection with the execution, delivery and performance of this Agreement or which could materially and adversely affect Host's ability to perform its obligations hereunder.

(e) Litigation and Claims. There are no Claims pending or threatened or asserted against Host which, if adversely decided, would prohibit or adversely affect Host's ability to perform its obligations under this Agreement or adversely affect Host's ability to accept the System at the expiration of this Agreement.

(f) No Brokers. Host shall have no obligation to pay any broker's, finder's, investment banker's, financial advisor's or similar fee or expense in connection with the execution or performance of this Agreement.

(g) Furnish Notice of Adverse Events. Host shall provide Seller with prompt written notice of any event which makes any of Host's representations and warranties in Article 8 untrue or inaccurate, except where such does not result in or cause a material adverse effect upon Host's ability to perform its obligations under this Agreement.

(h) Acknowledgement of Inapplicability of Bankruptcy Code Section 366. Host acknowledges and agrees that, for purposes of this PPA, Seller is not a "utility" as that term is defined in Section 3266 of the U.S. Bankruptcy Code, and agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding in which Host is a debtor.

ARTICLE 12. **INDEMNIFICATION**

12.1 Indemnification by Host. Host shall defend, indemnify and hold harmless Seller from and against (i) any Claims arising out of Host's breach of any of the provisions of this Agreement and (ii) any Claims made by Third Parties which are attributable to any breach or inaccuracy in the

representations or warranties furnished by Host in Section 11.2, and Host agrees to promptly pay and fully satisfy any and all Losses, Judgments and Expenses incurred or sustained, or reasonably likely to be incurred or sustained, by Seller as a result of any Claims of the types described in the foregoing clause. The Host's obligation to indemnify under this section shall be limited to the available insurance proceeds under Host's insurance.

12.2 Indemnification by Seller. Seller shall defend, indemnify and hold harmless Host, its directors, officers, members, employees and agents (including Hawaiiana Management Company, Ltd.) (together, the "Host Indemnitees" from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Seller or Host, and damage or destruction of property, including, but not limited to, property of Seller, Electric Utility or Host, or other loss or damage incurred by Host, arising out of (i) the breach by Seller, or Seller's contractors or subcontractors, of any of the provision of this Agreement, (ii) any Claims made by Third Parties which are attributable to any breach or inaccuracy in the representations or warranties furnished by Seller in Section 11.1, and (iii) negligent acts or omissions or misconduct of Seller, its agents, officers, directors, employees contractors, or subcontractors. The obligation to indemnify shall extend to and encompass all costs incurred by Host and any Host Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Seller's obligations pursuant to this Section 12.2 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or misconduct of Host, the Host Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties other than the Seller's contractors or subcontractors. Seller shall pay any costs that may be incurred by Host or the Host Indemnitees in enforcing this indemnity, including reasonable attorney fees. The Seller's obligation to indemnify under this section shall be limited to the available insurance proceeds under Seller's insurance.

12.3 Notice of Claims. Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a notice describing the facts underlying its indemnification Claim and the amount of such Claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Article 12, except to the extent that such Indemnifying Party has been prejudiced by such failure.

12.4 Defense of Action. If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any Claim arises as to which the indemnity provided for in this Article 12 applies, and the Indemnifying Party fails to assume the defense of such Claim after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such Claim,. All expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

12.5 Survival of Provisions. The provisions of this Article 12 shall survive the expiration or termination of this Agreement.

ARTICLE 13.
DEFAULT; REMEDIES

13.1 Host Default. The occurrence at any time of any of the following events shall constitute a “Host Default”:

(a) Failure to Pay. The failure of Host to pay during the Term any amounts owing to Seller on or before the day following the date on which such amounts are due and payable under the terms of this Agreement and Host’s failure to cure each such failure within fifteen (15) days after Host receives written notice of each such failure from Seller;

(b) Failure to Perform Other Obligations. Unless due to a Force Majeure Event excused by Section 9.2, the failure of Host to perform or cause to be performed any other obligation required to be performed by Host under this Agreement, or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Host shall have a period of thirty (30) business days after receipt of written notice from Seller of such failure to Host to cure the same and a Host Default shall not be deemed to exist during such period; provided, further, that if Host commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for ninety (90) additional days;

(c) Bankruptcy, Etc. (a) Host admits in writing its inability to pay its debts generally as they become due; (b) Host files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America, the State or any other state, district or territory thereof; (c) Host makes an assignment for the benefit of creditors; (d) Host consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Host has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Host’s assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Host’s assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

(d) Lease Default. A material default by Host under the Lease occurs which is not cured in accordance with the terms thereof.

13.2 Seller Default. The occurrence at any time of the following event shall constitute a “Seller Default”:

(a) Failure to Perform Obligations. Unless due to a Force Majeure Event excused by Section 9.2, the failure of Seller to perform or cause to be performed any obligation required to be performed by Seller under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Seller shall have a period of thirty (30) business days after receipt of written notice from Host of such failure to Seller to cure the same and a Seller Default shall not be deemed to exist during such period; provided, further, that if Seller commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for one hundred eighty (180) additional days;

(b) Bankruptcy, Etc. (a) Seller admits in writing its inability to pay its debts generally as they become due; (b) Seller files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America, the State or any other state, district or territory thereof; (c) Seller makes an assignment for the benefit of creditors; (d) Seller consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Seller has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Seller's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Seller's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control; or

(c) Lease Default. A material default by Seller under the Lease occurs which is not cured in accordance with the terms thereof.

13.3 Remedies Following Default.

(a) Host's Remedies Upon Occurrence of a Seller Default.

(i) Termination. If a Seller Default as described in Section 13.2 has occurred and is continuing, and if Seller fails to correct or cure the conditions causing such Seller Default within ten (10) days after Seller shall have received Host's written notice of Host's intent to terminate this Agreement as a result of such Seller Default, then this Agreement shall terminate and be of no further force or effect as of the last day of such ten (10) day period.

(i) Other Rights and Remedies. If any Seller Default described under Section 13.2 has occurred and Host has terminated this Agreement as a result thereof in accordance with the terms of Section 13.3(a)(i), then Seller's sole liability to Host in respect of such Seller Default shall be the removal of the System at Seller's sole cost and expense or Host may purchase the System from the Seller for the greater of Fair Market Value or Termination Value. Except as provided in Article 4, Article 12, and Section 13.3(a)(i), Host shall have no right to terminate this Agreement and shall have no other remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Seller and the rights and remedies available to Host hereunder, shall be in addition to and not a limitation of any duties, obligations, warranties, guarantees, obligations, rights and remedies otherwise imposed or available by law or other provisions of this Agreement.

(ii) Removal of the System. Upon Host's termination of this Agreement pursuant to Section 13.3(a)(i), Seller shall remove the System from the Site in accordance with Article 4.6.

(b) Seller's Remedies Upon Host Default. If a Host Default as described in Section 13.1 has occurred and is continuing, and if Host fails to correct or cure such Host Default within ten (10) days after the date on which Seller gives Host written notice of Seller's intent to terminate this Agreement as a result of such Host Default, then this Agreement shall terminate and be of no further force or effect as of the last day of such ten-(10) day period and Seller shall have the right to (a) demand in writing that Host pay the Termination Value of the System as liquidated damages, in which case title to the System shall transfer to Host upon such payment, and Host shall thereupon be obligated to payment the Termination Value of the System, or (b) remove the System in accordance with Section 4.6 and Host shall

be obligated to pay to Seller the Termination Value plus the costs incurred by Seller to remove the System from the Site as liquidated damages. The Parties agree that actual damages to Seller in the event of a Host Default would be difficult to ascertain and that the Termination Value is a reasonable approximation of the damages suffered by Seller as a result of the early termination of this Agreement. Seller shall also have, without limitation, all other rights and remedies available to it hereunder.

13.4 No Consequential Damages. Nothing in this Agreement is intended to cause either Party to be, and neither Party shall be, liable to the other Party for any lost business or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Host and Seller. Notwithstanding the foregoing, none of the payments for Energy or any other amount specified as payable by Host to Seller under the terms of this Agreement upon the termination of this Agreement shall be deemed consequential damages.

13.5 Effect of Termination of Agreement. Upon the Termination Date or the Expiration Date, as applicable, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Host and Seller under this Agreement shall be terminated (other than the indemnity obligations set forth in Article 12). Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

ARTICLE 14. **DISPUTE RESOLUTION AND ARBITRATION**

14.1 Dispute Resolution Procedure.

(a) If a dispute should arise under this Agreement, the Parties shall seek to resolve such dispute through good faith negotiations.

(b) If the Parties are unable to resolve the dispute within thirty (30) days, then they may use a non-binding resolution process in an effort to resolve the dispute. Within fifteen (15) days after the expiration of the 30-day period, the Parties shall meet to agree upon a neutral advisor and the ground rules for this process. The ground rules will include provisions for a mutual information exchange and briefing schedule, if necessary, and the compensation of the neutral advisor. The goal of any such information exchange and briefs will be to prepare as expeditiously as possible for the hearing before the neutral advisor. If the Parties are unable to agree upon, or to select, a neutral advisor, then they may seek the assistance of Dispute Prevention and Resolution, Inc., Honolulu, Hawaii ("DPR").

(c) The Parties shall present their respective cases to the neutral advisor at a date and time, and in accordance with the ground rules, mutually agreed to by the Parties. Within fifteen (15) days after the conclusion of the hearing, the senior executives who attended the hearing shall meet to attempt to resolve the dispute. If they are unable to resolve the dispute at such meeting, then any Party may request the neutral advisor to render an advisory opinion on how the dispute would be decided at a trial. Within fifteen (15) days after receiving this advisory opinion, the senior executives shall again attempt to resolve this dispute.

(d) The neutral advisor shall be charged with strictly interpreting the terms of this Agreement and shall not seek to compromise or decide issues not expressly provided for under this Agreement. However, the Parties, by mutual agreement stated in a separate document, may submit to the neutral advisory issues not otherwise covered by this Agreement. Each Party to this non-binding resolution process shall share equally the cost of the services of the neutral advisor.

14.2 Arbitration. If the process outlined in Section 14.1 fails to resolve the dispute, or if the Parties elected to proceed directly to arbitration, then the issues involved shall be submitted to arbitration. The Parties agree jointly to use the services of DPR and its commercial arbitration rules then in effect, provided that the arbitration (unless the Parties otherwise agree) shall be conducted by a single arbitrator appointed pursuant to such rules to hear the case. The Parties shall share the costs of the arbitration equally. The decision of the arbitrator shall be final and binding upon the Parties and may be enforced in any court of competent jurisdiction. The venue of the arbitration shall be Honolulu, Hawaii unless the Parties designate a different venue. The Parties shall not be required to arbitrate in the event that all the parties to a dispute cannot be joined in the same proceeding.

14.3 Good Faith. Each of the Parties agrees to implement the provisions of this Article 14 in good faith in order to resolve the dispute as expeditiously and amicably as possible. Further, each Party shall continue to perform its obligations under this Agreement during any dispute resolution process, including arbitration, and no amount payable, other than the amount in dispute, shall be withheld during the period of the dispute resolution.

ARTICLE 15. **CASUALTY; CONDEMNATION.**

15.1 Casualty Affecting the System and/or the Site.

(a) If the whole or a substantial portion of the Building (including the Premises) on which the System is located is materially damaged or destroyed by fire or other casualty, then, subject to the terms hereof, Host may promptly repair the damage and/or restore the Building or the Premises to such good condition as existed before the destruction or damage. If, during the reconstruction due to casualty or needed repair to the Building or the Premises, Seller cannot reasonably operate the System pursuant to the Agreement on the Site, but Seller, in the mutual determination of Seller and Host, can reasonably continue such operations from an alternate space on the Site, then Host shall provide Seller with such sufficient temporary alternate space to allow Seller to operate the System until the Site is repaired and Seller can reoccupy and use the Building and the Premises for the purposes hereunder. If such reconstruction is not completed for whatever reason and Seller is unable to reoccupy the Building and the Premises in resuming operations of the System, then this Agreement may be terminated as set forth below.

(b) If, in Host's reasonable estimation, the Building and the Premises cannot be restored within twelve (12) months from the date of such fire or casualty but will require further time, then Host shall give notice to Seller of such estimate within ninety (90) days after such fire or casualty. Seller or Host may elect in writing, within ninety (90) days following the date of such notice from Host, to terminate this Agreement effective as of the date of the notice of termination.

(c) Should Host fail to repair or restore the Building and the Premises within twelve (12) months of the date of such damage or destruction, or to repair the same within such shorter time period after the casualty as may be reasonable, then Seller, upon thirty (30) days written notice to Host, may terminate this Agreement, provided that Seller makes such election within sixty (60) days of the expiration of said repair or replacement period.

15.2 Taking of the Site; Termination. If, prior to the Transfer Date, the whole or a substantial part of the Site shall be lawfully condemned or taken in any manner for any public or quasi-public use, or if all or a substantial part of the Site shall be so condemned or taken in a manner that completely or substantially prevents Seller from operating the System (such determination to be made by Seller in its sole and absolute judgment), then this Agreement shall forthwith cease and terminate on the date of the

taking of possession by the condemning authority, and Host shall be entitled to the entire condemnation award with respect to the Site, except that Seller shall be entitled to the condemnation award with respect to its interest in the System.

15.3 Casualty Affecting the System.

(a) If all or a substantial portion of the System is materially damaged or destroyed by fire or other casualty, then, subject to the terms hereof, Seller may promptly repair the damage and/or restore System to such good condition as existed before the destruction or damage. During the reconstruction due to casualty or needed repair to System, Seller shall seek, to the extent practicable and consistent with safety considerations, to operate the System pursuant to the Agreement from the Site. If such reconstruction or repair is not completed for whatever reason and Seller is unable to resume operation of the System, then this Agreement may be terminated as set forth below.

(b) If, in Seller's reasonable estimation, the System cannot be restored within twelve (12) months from the date of such fire or casualty but will require further time, then Seller shall give notice to Host of such estimate within ninety (90) days after such fire or casualty. Host or Seller may elect in writing within ninety (90) days following the date of such notice from Seller, to terminate this Agreement effective as of the date of Seller's notice.

(c) Should Seller fail to repair or restore System within twelve (12) months from the date of destruction, or to repair the same within such shorter time period after the casualty as may be reasonable, then Host, upon thirty (30) days written notice to Seller, may terminate this Agreement, provided that Host makes such election within sixty (60) days of the expiration of said repair or replacement period.

15.4 Taking of the System; Termination. If the whole or a substantial part of System shall be lawfully condemned or taken in any manner for any public or quasi-public use, this Agreement shall forthwith cease and terminate on the date of the taking of possession by the condemning authority, and Seller shall be entitled to the entire condemnation award with respect to the System (and its property in connection therewith), except that Host shall be entitled to the condemnation award with respect to its interest in the Site.

ARTICLE 16. **CONFIDENTIALITY**

16.1 Confidentiality Obligation. If either Party provides confidential information (including financial information, proprietary, patented, licensed, copyrighted or trademarked information or technical information) regarding the design, operation and maintenance of the System, or of Host's business (collectively, the "Confidential Information"), to the other Party or, if in the course of performing under this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to Third Parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information except in performing under this Agreement. Notwithstanding the foregoing, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively "Representatives"), and Affiliates, lenders, and potential assignees of this Agreement (provided that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature, and shall be directed to treat such

information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section, except as set forth in Section 16.2. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

16.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

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

16.3 Goodwill and Publicity. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, this Agreement or the System. Host shall have the right to publicize that it is serving as a "renewable energy host" for the System and to display photographs of the System in its advertising and promotional materials; provided that any such materials identify Seller as the owner and developer of the System and shall be consistent with Section 5.8 to the extent that such Section is or becomes applicable. On all signage at the Site, and in all publicly distributed materials and other public communications issued by either Party that refer to the System by name, such name shall be followed by a statement to the effect that Seller owns and operates the System.

16.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article 16 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article 16. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article 16, but shall be in addition to all other remedies available at law or in equity.

ARTICLE 17. **GENERAL PROVISIONS**

17.1 Assignment.

(a) Host may not assign or transfer all or any of its rights, benefits or obligations under this Agreement without the prior written consent of Seller, provided that Host may, without Seller's consent, assign this Agreement to an Affiliate, by operation of law or as a result of a change of ownership

or control of Host; in which case Host shall promptly inform Seller of the assignment and the name and address of the assignee, and provided further that the assignee shall agree in writing, if requested by Seller, to perform all of Host's obligations hereunder.

(b) Seller may, without Host's consent, assign, pledge or transfer all or any part of, or any right or obligation under this Agreement or Lease (i) to any Affiliate of Seller, (ii) to any party that acquires Seller or all or substantially all of Seller's assets, (iii) for security purposes in connection with any financing or other financial arrangements regarding the System, or (iv), by operation of law; provided, however, that Seller shall promptly inform Host of the assignment and the name and address of the assignee, and provided further that the assignee agree in writing, if requested by Host, to perform all of Seller's obligations hereunder.

17.2 Notices. All notices and other communications given or required shall be in writing and shall be deemed given to a Party when (i) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (ii) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment (provided, for email, that a copy of such email notice is sent immediately thereafter in accordance with this Section by hand delivery, overnight delivery or facsimile); or (iii) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a Party may designate by notice to the other Party):

If to Host: Hawaii Theater Center
Attn: _____
1130 Bethel Street
Honolulu, HI 96813
Tel: (808) _____
Fax: (808) _____
Email: _____

If to Seller: SPS Solar VII LLC
Attn: Scott LaRue
P.O. Box 1828
and/or 792 Mokapu Road
Kailua, HI 96734
Tel: (808) 330-9000
Fax: (808) 550-1099
Email: sjlarue@gmail.com

17.3 Integrated Agreement. This Agreement, together with the Exhibits attached hereto, constitutes the entire agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, representations and statements (whether oral or written) between the Parties concerning the subject matter hereof.

17.4 Waivers. Either Party may waive, but only in writing, (i) the time for the performance of any obligation of the other Party hereunder; (ii) any inaccuracies in the representations or warranties of the other Party contained herein; (iii) compliance with any of the conditions or covenants of the other Party contained herein; or (iv) performance of any of the obligations of the other Party hereunder. The waiver by any Party of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

17.5 Severability. If any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal or unenforceable by reason of the operation of Applicable Law, such determination shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement, and shall not render this Agreement unenforceable or invalid as a whole. Instead, the provision that is found to be invalid or unenforceable shall be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this Agreement shall remain in full force and effect.

17.6 Attorneys' Fees. Subject to Article 14, if any dispute arises under this Agreement, the substantially prevailing party shall be entitled to recover its reasonable attorneys' fees and arbitration and/or court costs incurred in resolving or settling the dispute, in addition to any and all other damages or relief which a court may deem proper.

17.7 Binding Effect. This Agreement shall be binding upon and enforceable by the Parties and their permitted successors and assigns.

17.8 Construction. This Agreement shall be construed neither against nor in favor of any Party, but rather in accordance with the fair meaning thereof.

17.9 No Third Party Rights. This Agreement is only for the benefit of the Parties, their successors and permitted assigns and Persons expressly benefited by the indemnity provisions of this Agreement. No other Person (including, without limitation, the Electric Utility with respect to the Site) shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any Party of its obligations under, this Agreement.

17.10 No Partnership. This Agreement is not intended, and shall not be construed, to create any partnership, association, joint venture or agency relationship between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

17.11 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

17.12 Amendments. This Agreement shall not be amended, modified or supplemented, except by a written instrument executed by the Parties.

17.13 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Hawaii, without regard to its principles of conflicts of law.

17.14 Further Assurances. The Parties agree to execute and deliver any instruments, and to perform any acts, that may be necessary or reasonably requested in order to give full effect to the provisions of this Agreement

17.15 Time is of the Essence. Time is of the essence with respect to this Agreement and the transactions contemplated hereunder.

17.16 Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed and original and all of which together shall constitute one and the same agreement binding on the Parties. In addition, for purposes of executing this Agreement, a document (or signature page thereto) signed and transmitted by facsimile or in .pdf format by email shall be treated as an original document. The signature of any Party thereon, for purposes hereof, shall be considered as an original signature, and the document transmitted shall be considered to have the same binding effect as an original signature on an original document.

IN WITNESS WHEREOF, the Parties have executed this Agreement on and as of the date first written above.

SPS SOLAR VII LLV
a Hawaii limited liability company

By: _____

Name:

Its:

Seller

HAWAII THEATER CENTER
a Hawaii nonprofit corporation

By: _____

Name: _____

Title: President/Vice-President (Circle One)

By: _____

Name: _____

Title: Treasurer/Secretary (Circle One)

Host

EXHIBIT A

DESCRIPTION OF THE PROPERTY AND BUILDING

[Pursuant to Section 1.1]

Tax Key (1) 2-1-003-014

All of that certain parcel of land (being part of R. P. 8108, L. C. Aw. 10806, Ap. 13 to Kamehameha III) situate at Pamoo, Nuuanu, City and County of Honolulu, State of Hawaii, containing an area of 15,865 square feet more or less and comprising LOT A, and bounded and described as follows:

Beginning at the east corner of this lot, the same being the west intersection of Bethel and Pauahi Streets, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MOSSMAN" being 136.21 feet north and 688.55 feet east and running thence by azimuths measured clockwise from true South:

1. 58°49' 121.55 feet along the northwest side of Bethel Street:
2. 148°35' 70.70 feet along Bijou Lane;
3. 159°25' 15.00 feet along same along R. P. 8195, L.C. Aw.
514 to W. Wallace;
4. 148°00' 48.00 feet along R. P. 8195, L.C. Aw. 514 to W.
Wallace;
5. 238°42' 115.80 feet along the remainder of R. P. 8108, L.C.
Aw. 10806, Ap. 13 to Kamehameha III;
6. 327°06' 133.78 feet along the southwest side of Pauahi Street
to the point of beginning.

Being the premises acquired by Deed dated June 2, 1988 and recorded in Liber 22097 Page 106, by and between Trustees of the Estate of Bernice Pauahi Bishop to Hawaii Theatre Center, a non-profit corporation

EXHIBIT B

DESCRIPTION OF THE SYSTEM

[Pursuant to Sections 1.1 and 6.1]

1. **Description of the System [Section 1.1]:**

The System consists of approximately or similar:

365 LG 280W NEON solar modules (with 25 year manufacturer power warranty)

80 Sunperfect 280W solar modules (with 25 year manufacturer power warranty)

Enphase Energy M215 Micro-inverters (with 25 year manufacturer warranty)

SolarEdge inverters

Fully Ballasted Flat Racking

Enphase Enlighten® internet system monitoring (for the lifetime of the system)

Customer - Hawaii Theatre Center

Site - 1130 Bethel Street, Honolulu

Prelim Sz DC - 124.6 kW DC

Prelim Module 1- LG 280 NEON

Module 1 - 365

Prelim Module 2 - SunPerfect CRM280S

Module 2 - 80

Prelim Inverters - Enphase M215 Micro Inverter

4 - SE5000US

Prelim Rack - Fully Ballasted, Flat



2. **O&M Work Specifications [Section 6.1(a)]:**

O&M Work will include:

- a. Calibration of utility meters as required by manufacturer
- b. Annual cleaning of the photovoltaic modules
- c. Annual System inspection
- d. Routine maintenance of the System to include correction of loose electrical connections, replacement of defective modules found during testing, other minor repair work
- e. Troubleshooting and correction of anomalies and outages that affect System performance
- f. Monitoring of System output

EXHIBIT C

PPA Energy Rate Schedule		
<u>Energy Price</u>	\$	0.22
<u>Annual Escalation</u>		3%
COD	\$	0.220
1	\$	0.227
2	\$	0.233
3	\$	0.240
4	\$	0.248
5	\$	0.255
6	\$	0.263
7	\$	0.271
8	\$	0.279
9	\$	0.287
10	\$	0.296
11	\$	0.305
12	\$	0.314
13	\$	0.323
14	\$	0.333
15	\$	0.343
16	\$	0.353
17	\$	0.364
18	\$	0.375
19	\$	0.386
20	\$	0.397