

**MEMBERSHIP INTERESTS
PURCHASE AGREEMENT**

between

THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT CORPORATION,
as Seller,

and

[PURCHASER],
as Purchaser,

with Respect to All
Membership Interests of

[Project Company]

Dated [_____]

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Membership Interest Purchase and Sale Agreement

This *Membership Interest Purchase and Sale Agreement*, by and between [Purchaser], a [State] limited liability company having its principal place of business at [Purchaser Address] (“**Purchaser**”) and the New York State Energy Research and Development Authority, a New York public benefit corporation having its principal place of business [Seller Address] (“**Seller**”).

BACKGROUND

Seller owns, beneficially and of record as uncertificated securities, all of the issued and outstanding limited liability company membership interests of: [Project Company], a New York limited liability company (“**Project Company**”).

Project Company has undertaken activities and owns certain assets related to the development of its respective Project (as defined below).

Sellers desire to sell, and Purchaser desires to purchase, the Seller’s membership interests in the Project Company (the “**Interests**”) on the terms, and subject to the conditions, set forth in this Agreement.

Seller and Project Company are entering into that certain Renewable Energy Standard Agreement, dated the date hereof (the “**REC Agreement**”) pursuant to which, Seller shall procure Tier 1 Renewable Energy Certificates (“**RECs**”) from the Project Company which RECs are created through the production of renewable energy from the Project (as defined below).

Purchaser is granting to Seller, subject to the terms and conditions of this Agreement, an option to repurchase the Interests sold to Purchase hereunder under certain circumstances and, in furtherance of such option, Purchaser agrees that it shall not sell, transfer, assignor or convey the Interests for a limited period of time as further described herein.

AGREEMENT

ARTICLE 1 DEFINITIONS, INTERPRETATION

(i) **Definitions.**

(A) **Defined Terms.** As used in this Agreement in initial or complete capitalization, the following defined terms have the meanings indicated below:

“**Actions or Proceedings**” means any action, demand, claim, complaint, dispute, litigation, suit, proceeding, mediation, arbitration, or Governmental or Regulatory Authority investigation.

“**Affiliate**” means with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified Person, and for the purposes of this definition, the word “control” and all derivatives thereof mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person through the ownership of voting securities or a general partnership interest or by contract or otherwise.

“**After-Tax Basis**” means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (“**Base Payment**”) supplemented by a further amount (“**Additional Amount**”) to such Person so that the sum of the Base Payment plus the Additional Amount shall, after deduction of the amount of all Taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Amount (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Amount), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest applicable statutory rates applicable to a corporation for all relevant periods, and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

“**Agreement**” means this agreement, the exhibits, and the schedules hereto, and any ancillary documents or agreements executed or entered into by one Party and delivered to the other pursuant to this Agreement, as any of the same shall be amended or supplemented from time to time.

“**Anti-Corruption Laws**” is defined in Section 10.16(a).

“**Apportioned Obligations**” is defined in Section ARTICLE 7(i)(A).

“**Assets**” means all assets, properties, rights and interests of any Person of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person or that such Person has a contractual right to use.

“**Assignment Agreement**” means the Assignment Agreement substantially in the form of Exhibit A attached hereto.

“**Books and Records**” means all files, documents, instruments, papers, organizational documents, minutes, logs, books, and records relating to the Business or Condition of the Project Company.

“**Business Day**” means any day for which the New York State Department of Financial Services has designated as a legal holiday observance on which all banking institutions may be closed in accordance with the provisions of the New York General Construction Law.

“**Business or Condition of the Project Company**” means the business, assets, financial condition and prospects of the Project Company taken as a whole.

“**Call Option**” is defined in Section ARTICLE 6(i).

“**Claim Notice**” means written notification pursuant to Section ARTICLE 9(ii)(A) of a Third Party Claim as to which indemnity under Section ARTICLE 9(i) is sought by an Indemnified Party, enclosing a copy of all papers served, if any, and specifying the nature of and basis for such Third Party Claim and for the Indemnified Party’s claim against the Indemnifying Party under Section ARTICLE 9(i) together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Loss arising from such Third Party Claim.

“**Closing**” means the closing of the transactions described in Section ARTICLE 2(i).

“**Closing Date**” is defined in Section ARTICLE 2(iv)(A).

“**Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“**Contested Taxes**” is defined in Section ARTICLE 7(i)(B).

“**Contract**” means any agreement, lease, easement, license (other than a License), evidence of Indebtedness, mortgage, indenture, security agreement, grant agreement, incentive agreement, or other contract relating to the Project or entered into by the Project Company or by which the Project Company or any of its Assets or Real Property are bound.

“**Contract Security**” has the meaning set forth in the REC Agreement.

“**Development Fee**” is defined in Section ARTICLE 2(ii)

“**Dispute Period**” means the period ending sixty (60) days following delivery by an Indemnified Party of either a Claim Notice or an Indemnity Notice.

“**Dollars**” means United States of America dollars.

~~“**Effective Date**” means the latter of: (i) the date that this Agreement is contemporaneously signed by both Parties; or (ii) the latest date that this Agreement is countersigned by either Seller (in the case where Purchaser signs first) or Purchaser (in the case where Seller signs first).~~

“**Effective Date**” means [DATE OF DOCUMENT].

“**Employee Benefit Plan**” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA, (29 U.S.C. §1002(3)) as amended, and the rules and regulations promulgated thereunder, and any plan providing benefits to employees, leased employees or independent contractors, whether or not within the definition of Section 3(3) of ERISA, such as, including without limitation, any bonus, incentive compensation, deferred compensation, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, severance, or individual life, health, accident, disability, workmen’s compensation or other insurance, plan, practice, policy or arrangement of any kind, whether written or oral, whether or not tax-qualified within the meaning of Section 401 of the Code.

“**Environmental Condition**” means the presence or release to the environment, at the Site, of any Hazardous Material, including any migration of any Hazardous Material through air, soil or groundwater at, to or from the Site, regardless of when such presence or release occurred or is discovered.

“**Environmental Law**” means any Law or Order relating to pollution, releases, Hazardous Material or the regulation, remediation, removal, cleanup, or protection of human health, safety, cultural or archaeological resources, artifacts, animal and plant species, or the environment or to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment (including ambient air, soil,

surface water, ground water, wetlands, land or subsurface strata), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes.

“**Environmental Liabilities**” means any and all costs, damages, expenses, liabilities, obligations or other responsibilities arising from or under any Environmental Law and consisting of or relating to: (a) any environmental, health or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and costs and expenses of response, investigative, Remediation or inspection costs and expenses arising under any Environmental Law; (c) financial responsibility under any Environmental Law for remediation; (d) any other compliance action, corrective action, investigative action or remediation required under any Environmental Law; or (e) any combination of (a) through (d).

“**Equity Option**” means any security, right, subscription, warrant, option, “phantom” stock right or other Contract that gives a Person the right to (a) purchase or otherwise receive or be issued any equity interest of a Person or any security of any kind convertible into or exchangeable or exercisable for any equity interest of such Person or (b) receive or exercise any benefits or rights similar to any rights enjoyed by or accruing to the holder of equity interests of a Person, including any rights to participate in the equity or income of such Person or to participate in or direct the election of any directors, managers or officers of such Person or the manner in which any equity interests of such Person are voted.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“**GAAP**” means generally accepted accounting principles in the United States of America, consistently applied throughout the specified period and in the immediately prior comparable period.

“**Governmental Approval**” means any authorization, approval, consent, License, exception, variance, Order, franchise, lease, ruling, permit, tariff, certification, exemption, filing, notice to, declarations of, or registration by or with any Governmental or Regulatory Authority.

“**Governmental or Regulatory Authority**” means any court, tribunal, arbitrator, authority, agency, commission, official, or other instrumentality of the United States or any state, county, city or other political subdivision.

“**Hazardous Activity**” means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about, or from a Site or any part thereof into the environment.

“**Hazardous Material**” means: (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs); (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous

substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants” or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited, or regulated by any Governmental or Regulatory Authority under any Environmental Law.

“**Host Community Benefit Agreement**” means the Host Community Benefit Agreement between the Project Company and [Name of Community] substantially in the form of Exhibit B.

“**IA Call Notice**” is defined in Section ARTICLE 6(i)(A).

“**IA Drop Dead Date**” shall be [month, date, year] [Note to draft: prior to closing, a specific date will be inserted into this Agreement that is 12 months after the IA Milestone Date, as bid by Purchaser to Seller.]

“**IA Milestone Date**” shall be [month, date, year] [Note to draft: prior to closing, a specific date will be inserted into this Agreement as bid by Purchaser to Seller.]

“**Indebtedness**” means all obligations of a Person: (a) for borrowed money; (b) evidenced by notes, bonds, debentures, or similar instruments; (c) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business); (d) under capital leases; and (e) in the nature of guaranties of the obligations described in clauses (a) through (d) above of any other Person.

“**Indemnified Party**” means any Person claiming indemnification under any provision of ARTICLE 9, *INDEMNIFICATION*.

“**Indemnifying Party**” means any Person against whom a claim for indemnification is being asserted under any provision of ARTICLE 9, *INDEMNIFICATION*.

“**Indemnity Notice**” means written notification pursuant to Section ARTICLE 9(ii)(B) of a claim for indemnity under ARTICLE 9, *INDEMNIFICATION* by an Indemnified Party, specifying the nature of and basis for such claim, together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Loss arising from such claim.

“**Information**” is defined in Section ARTICLE 10(v)(A).

“**Intellectual Property**” is defined in Section ARTICLE 3(xviii).

“**Interconnection Agreement**” or “**IA**” is defined as the Standard Small Generator Interconnection Agreement, as defined in Attachment Z of the NYISO OATT, for the Project.

“**Interests**” is defined in the recitals to this Agreement.

“**IRS**” means the United States Internal Revenue Service.

“**Knowledge**” means: (a) with respect to Seller, matters actually known to the Persons set forth on Schedule 1 attached hereto, after reasonable due inquiry; and (b) with respect to Purchaser, matters actually known to the managers and executive officers after reasonable due inquiry.

“**Laws**” means all laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, certificates, orders, interpretations, licenses, leases and permits of any Governmental or Regulatory Authority, Governmental Approvals, Environmental Laws, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi-judicial tribunal of competent jurisdiction and all requirements of law.

“**Lease**” means the lease for development for the Real Property.

“**Lender**” means: (a) any and all bondholders, noteholders, [tax equity investors](#) or lenders, directly or indirectly, holding an interest in obligations issued pursuant to any debt or [tax equity](#) documents; (b) the agent, trustee, collateral agent or depository for any Person listed in clause (a) above; and (c) the successors and permitted assigns of any of the foregoing.

“**Liabilities**” means any direct or indirect liability, Indebtedness, obligation, commitment, expense, deficiency, or guaranty, in each case requiring the payment of a monetary amount, of or by the Project Company of any type, whether accrued, absolute, contingent, matured, unmatured, liquidated, unliquidated, known, or unknown.

“**Licenses**” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises, and similar consents granted or issued by any Governmental or Regulatory Authority.

“**Liens**” means any mortgage, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge, or other encumbrance of any kind, or any conditional sale Contract, title retention Contract or other Contract to give any of the foregoing.

“**LLC Agreement**” means the Operating Agreement of the Project Company and any and all amendments or variations thereto.

“**Loss**” or “**Losses**” means any and all damages (including incidental and consequential damages incurred with respect to any Third Party Claim but not any claim by a Party except as expressly provided herein), fines, penalties, deficiencies, losses, interest, awards, judgments, expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment), and diminution of value, whether or not involving a third party claim, but excluding Taxes.

“**Material Adverse Effect**” means any effect, [change](#), condition, fact, circumstance, or event that is or is reasonably likely to be materially adverse to the Project or: (a) the business, assets, liabilities, results of operation or condition (financial or otherwise) of the Project Company; (b) the ability of Seller to consummate the transaction or perform its obligations under this Agreement; or (c) the ability of the Seller or the Project Company to perform obligations under any material Contract; *provided*, “Material Adverse Effect” specifically excludes any effect, condition, fact, circumstance, or event arising or resulting from: (w) industry, market, political, or macroeconomic financial conditions; (x) changes in GAAP or accounting standards, principles, or interpretations; (y) unavailability of debt or equity financing; or (z) material changes in or to the Code.

“**MW**” means a megawatt of alternating current (a/c) capacity.

“**NYISO**” means the New York State Independent System Operator.

“**NYISO OATT**” means the NYISO Open Access Transmission Tariff, current as of the Effective Date of this Agreement and as may be modified.

“**Option Expiration Date**” is defined in Section ARTICLE 6(i)(A).

“**Option Period**” means the period commencing on the Closing Date and terminating at 5:00 pm Eastern Time on the Option Expiration Date.

“**Option Price**” means the sum of the (1) Post-Closing Costs, and (2) the product of the Purchase Price and 0.5.

“**Order**” means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

“**Other Real Property Interest**” means any easement, use, right-of-way, license or other non-exclusive right to use real property, but not including any leasehold interest.

“**Party**” or “**Parties**” means, individually, Seller or Purchaser, and collectively, both Seller and Purchaser.

“**Permitted Lien**” means any one or more of: (a) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP; (b) any statutory Lien arising in the ordinary course of business by operation of Law with respect to a Liability that is not yet due or delinquent; or (c) those exceptions to title set forth in Schedule ARTICLE 3(xv).

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association, or Governmental or Regulatory Authority.

“**Personal Property**” is defined in Section ARTICLE 3(xvii).

“**PILOT Agreement**” means an agreement to make certain payments in lieu of real property taxes to [applicable Governmental or Regulatory Authorities] pursuant to NY R.P.T.L. § 487(9) (McKinney), substantially in the form of Exhibit C.

“**Post-Closing Costs**” means all reasonable, and documented out-of-pocket expenses or costs incurred by Purchaser or the Project Company necessary to advance the Project after the Closing Date through and including the IA Drop Dead Date.

“**Project**” means the solar energy project that is the subject of this Agreement, known as BR Benson Mines Solar Project located south of the intersection of New York State Route 3 and Benson Mines – Newtown Falls Road, in the Town of Clifton, County of St. Lawrence, New York.

“**Project Company**” is defined in the recitals to this Agreement.

“**Prudent Industry Practices**” means those practices, methods, standards and acts (including those engaged in or approved by a significant portion of the solar generated electric power industry for similar solar electric generation facilities in the United States) that at a particular time in the exercise

of good judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Laws, safety, environmental protection, economy and expedition. Prudent Industry Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“**Purchase Price**” is defined in Section ARTICLE 2(ii).

“**Purchase Price Adjustments**” means the amounts calculated pursuant to Section 2.03.

“**Purchaser**” is defined in the preamble to this Agreement and includes its permitted successors and assigns.

“**Purchaser Indemnified Parties**” means Purchaser, its Affiliates and their respective successors and assigns, shareholders, officers, directors, employees, and agents, and, after the Closing Date, the Project Company, its successors and assigns, partners, members, officers, managers, employees, and agents.

“**Real Property Interests**” or “**Real Property**” is defined in Section ARTICLE 3(xv)(A).

“**RECs**” is defined in the recitals to this Agreement.

“**REC Agreement**” is defined in the recitals to this Agreement.

“**Representatives**” means a Person’s directors, officers, partners, managers, employees, Affiliates, controlling persons, representatives (including authorized financial advisors, attorneys, and accountants except as prohibited by any Law, Order or other rule of governing the conduct and/or professional responsibility of financial advisors, attorneys, and accountants generally) and agents.

“**Schedule of Costs and Commitments**” is defined in Section ARTICLE 3(ix).

“**Seller**” is defined in the preamble of this Agreement and includes its permitted successors and assigns.

“**Seller Indemnified Parties**” means the Seller, their Affiliates, and their successors, assigns, partners, members, shareholders, officers, directors, and agents.

“**Site**” means the Real Property upon which the Project would be constructed, as more specifically described in schedule ARTICLE 3(xv), together with all Real Property Interests.

“**Studies and Reports**” is defined in Section ARTICLE 3(xxi).

“**Subsidiary**” means any Person in which a Project Company, directly or indirectly through Subsidiaries or otherwise, beneficially owns more than fifty percent (50%) of either the equity interests in, or the voting control of, such Person.

“**System**” or “**Systems**” means the applicable solar photovoltaic, electrical generating facility(s), to be located on each applicable Site, including (without limitation) the solar photovoltaic panels, the solar tracking system, if any, and all structures, facilities, appliances, lines, conductors,

instruments, apparatus, components, roads and other equipment comprising and integrating the entire applicable facility.

“**Tax Returns**” means any report, form, return, statement, or other information (including any amendments) required to be supplied to a Governmental or Regulatory Authority by the Project Company with respect to Taxes, including information returns, any amendments thereof or schedule or attachment thereto and any documents with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“**Taxes**” means any income, gross or net receipts, property (real and personal), sales, use, capital gain, transfer, excise, license, production, franchise, employment, social security, occupation, payroll, registration, governmental pension or insurance, withholding, royalty, severance, stamp or documentary, value added, or other tax, charge, assessment, duty, levy, compulsory loan, payment-in-lieu-of-taxes, business or occupation (including any interest, additions to tax, or civil penalties thereon) of the United States or any state or local jurisdiction therein, or of any other nation or any jurisdiction therein.

“**Third Party Claim**” is defined in Section ARTICLE 9(ii)(A).

“**Transfer Taxes**” is defined in Section ARTICLE 7(i)(D).

“**Utility**” means Niagara Mohawk Power Corporation, d/b/a National Grid.

“**Utility Delay**” means a schedule delay that impairs the ability of the Purchaser to execute the Interconnection Agreement for the Project with the New York Independent System Operator and/or the Utility which delay is directly attributable to either: (a) inability of Purchaser, after diligent efforts, to reach agreement with the Utility, caused by the Utility’s unreasonable delays, as determined by Seller; or (b) failure by the Utility to meet any time parameters for performance by such Utility which are set forth in the OATT.

(ii) Interpretation.

(A) Unless the context of this Agreement otherwise requires: (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (v) the words “include” and “including” are not words of limitation and shall be deemed to be followed by the words “without limitation;” (vi) the use of the word “or” to connect two or more phrases shall be construed as inclusive of all such phrases (e.g., “A or B” means “A or B, or both”); and (vii) the phrase “ordinary course of business” refers to the business of the Project Company or a Subsidiary.

(B) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(C) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(D) Unless the context otherwise requires, a reference to any Law includes any amendment, modification or successor thereto.

(E) Any representation or warranty contained herein as to the enforceability of a Contract shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors' rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(F) In the event of a conflict between this Agreement and any exhibit, schedule or appendix hereto, this Agreement shall control.

(G) The paragraph headings have been used solely for convenience, and are not intended to describe, interpret, define or limit the scope of this Agreement.

(H) Conflicts or discrepancies, errors, or omissions in this Agreement or the various documents delivered in connection with this Agreement will not be strictly construed against the drafter of the contract language, rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the Parties at the time of contracting.

(I) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

(J) Any reference herein to a time of day means local prevailing time in Albany, New York.

(K) Any payment obligations shall be tendered in Dollars, and any costs related to payor converting their funds to Dollars will be borne by payor.

ARTICLE 2 SALE OF INTERESTS AND CLOSING

(i) Purchase and Sale.

Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, all of the right, title and interest of Seller in and to the Interests, free and clear of all Liens, at the Closing on the terms and subject to the conditions set forth in this Agreement.

(ii) Purchase Price; Payments. In consideration of the sale of the Interests pursuant to Section (i), Purchaser agrees to pay Seller at the Closing the aggregate amount of THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000.00) (the "**Purchase Price**").

(iii) [Intentionally Omitted].

(iv) Closing.

(A) The closing of the transactions described in Section (i),

Purchase and Sale (“**Closing**”) will take place on the Effective Date, or on such other date as the Parties mutually agree upon in writing (“**Closing Date**”). The parties may agree that the Closing will occur through the electronic transfer of documents and each party may rely on each document sent electronically as an original.

(B) At the Closing, (i) Seller will assign and transfer to Purchaser all of Seller’s right, title and interest in and to the Interests, free and clear of all Liens, by delivering to Purchaser an executed Assignment Agreement in substantially the form of Exhibit A and (ii) Purchaser shall deliver the Purchase Price to the Seller in immediately available funds.

(C) At the Closing, there shall also be delivered to Seller and Purchaser the certificates and other Contracts, documents and instruments to be delivered on the Closing Date pursuant to ARTICLE 5, CLOSING OBLIGATIONS.

(v) Liabilities.

Purchaser does not assume and shall not be liable or responsible for, nor shall the Project Company be liable or responsible for, any of Seller’s, or Seller’s Affiliates’ liabilities or obligations arising from any matter unrelated to the Project or the Interests sold, assigned, and transferred to Purchaser hereunder.

(vi) Further Assurances, Post-Closing Cooperation.

(A) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing: (i) each of the Parties shall execute and deliver such other documents and instruments, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement; and (ii) upon the request of Purchaser, the Seller will, and will cause its Affiliates to, execute and deliver such other documents and instruments and take such other actions as may reasonably be necessary, proper or advisable, to evidence the conveyance by Seller or its Affiliates to Project Company of any and all rights, title, and interests that Seller or any of its Affiliates holds relating to the ownership or development of the Project, or to assist in Purchaser being fully constituted with such rights. In addition, Seller shall use all commercially reasonable efforts to assist Purchaser in obtaining abstracts and obtaining curative documents to address any title defects or deficiencies identified with respect to real property that is the subject of the Real Property Interests.

(B) At the Closing, the Seller agrees to deliver to Purchaser the originals of all Books and Records of Project Company. Following the Closing, each Party agrees to use commercially reasonable efforts to furnish or make available during normal business hours information, documents, or records (or copies thereof) at the recipient’s request, cost and expense to the extent reasonably required by the requesting Party in connection with: (i) the preparation of Tax Returns or any audit, examination or contest relating to Taxes; (ii) the integration of the accounting books and records; (iii) the determination or enforcement of rights and obligations under this Agreement or any agreements constituting part of the Assets; (iv) compliance with the requirements of any Governmental or Regulatory Authority in connection with the transactions contemplated by this Agreement; (v) in connection with any actual or threatened Action or Proceeding; and (vi) any combination of (i) through (v). Further, each Party agrees for a period extending seven (7) years after the later of the Closing Date or the date of creation of such books, records or other data, not to

destroy or otherwise dispose of any such books, records and other data unless such Party shall first offer in writing to surrender such books, records and other data to the other Party and such other Party shall not agree in writing to take possession thereof during the ten (10) day period after such offer is made.

(vii) Waivers of Indemnification.

Effective on the Closing Date, Seller hereby fully, irrevocably and unconditionally releases and forever discharges Project Company, as well as its successors and assigns and each of them of, from and against any and all rights to indemnification arising out of, relating to, concerning or in any way connected to: (a) any and all documents relating to the formation, management or control of such Project Company, whether the claims arise by agreement or by operation of law; (b) any agreements entered into in connection therewith, including any claims for fees, expense reimbursements, distributions, indemnities or other payments or rights to payments thereunder; (c) any claims for attorneys' fees, interest costs or litigation expenses, in each case, in connection with or arising out of the foregoing prior to the Closing Date; and (d) any combination of (a) through (c). The foregoing sentence shall not be deemed to be a release or waiver by Seller of any action or claim it may have against Purchaser arising under this Agreement.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER**

In order to induce the Purchaser to enter into this Agreement, Seller makes the following representations and warranties to the Purchaser as of the date hereof and on the Closing Date.

(i) Existence.

Seller is a public benefit corporation duly organized, validly existing, and in good standing under the Laws of State of New York. Seller has the full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby and thereby, including, to own, hold, sell and transfer the Interests and Assets. Project Company has full power and authority to conduct its business as and to the extent now conducted and to own, use and lease its Assets. Project Company is qualified to do business and in good standing under the Laws of each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary.

(ii) Authority.

This Agreement has been duly and validly authorized, executed and delivered by the Seller under applicable Law and the Seller's organizational documents. This Agreement constitutes legal, valid, and binding obligations of the Seller enforceable against the Seller in accordance with its terms, except as limited by the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) Interests.

Seller owns, beneficially and of record, and has good, valid and transferable title (free

and clear of all Liens) to one hundred percent (100%) of the outstanding Interests, which Interests constitute one hundred percent (100%) of the issued and outstanding equity interests in Project Company. The Interests of Project Company have been duly authorized and validly issued and are fully paid and nonassessable, and such Interests have not been issued in violation of any federal or state securities Laws. Project Company has not issued any certificates or other instruments to evidence the Interests. Except for this Agreement, there are no outstanding Equity Options with respect to the Project Company or any of the Interests. The delivery by Seller of the Assignment of Interests in the manner provided in Section ARTICLE 2(iv), Closing, will transfer to Purchaser good and valid title to the Interests, free and clear of all Liens.

(iv) Subsidiaries, No Other Business.

The Project Company does not have any Subsidiaries, or, other than as set forth in this Agreement, any Equity Options or other equity or ownership interests (or any Contracts or arrangements relating thereto) in any other Person. The Project Company does not conduct, and has never conducted: (a) any business other than the development, financing, ownership, operation and maintenance of the Project; or (b) any operations other than that incidental to the development, financing, ownership, operation and maintenance of the Project. The Project Company does not own any Equity Options or any equity or ownership interests in any other Person nor does it have any other arrangements or Contracts that could be treated as a partnership or other entity for Tax purposes.

(v) Consents and Approvals: No Violations.

The execution and delivery by Seller of this Agreement does not, and the performance by Seller of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(A) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organization documents of the Seller.

(B) subject to obtaining the consents, approvals, and actions, making the filings and registrations and giving the notices disclosed in schedule (v), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Seller, the Project Company, or any of their respective Assets (other than such conflicts, violations or breaches as would occur solely as a result of the identity or the legal or regulatory status of Purchaser or any of their Affiliates),

(C) except as disclosed in schedule (v), violate or render void or voidable any License or Governmental Approval applicable to the Seller, the Project Company, or any of their respective Assets.

(D) except as disclosed in schedule (v) : (i) conflict with or result in a violation or breach of; (ii) constitute (with or without notice or lapse of time or both) a default under; (iii) require the Seller or the Project Company to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of; (iv) result in or give to any Person any right of termination, cancellation, acceleration, or modification in or with respect to; or (v) result in the creation or imposition of any Lien upon the Seller or the Project Company or any

of their respective Assets under, any Contract or License to which the Seller or the Project Company is a party or by which any of their respective Assets is bound.

(E) The consents (or waivers in lieu thereof) if any, in schedule ARTICLE 3(v) have been obtained and are in full force and effect, if applicable.

(vi) Governmental Approvals and Filings.

(A) Schedule (vi) contains a true and complete list of all Governmental Approvals currently held by Seller or the Project Company or relating to the Project, and a true and complete list of all proposed Governmental Approvals relating to the Project that have been applied for but have not yet been obtained, setting forth for each such Governmental Approval the grantor, the grantee, the function and the renewal date of each. A true and complete copy of each such Governmental Approval obtained prior to the Closing Date and all applications and all other documents submitted to any Governmental or Regulatory Authority in connection therewith or which is otherwise related to the Project has been delivered to Purchaser prior to the date of this Agreement, and (i) Seller or the Project Company owns or validly holds all such Governmental Approvals that are described on schedule (vi) as held by Seller or the Project Company, (ii) each such Governmental Approval is valid, binding and in full force and effect and has not been amended or modified since the date of this Agreement, except as otherwise described on and no action has been taken or proposed by any Governmental or Regulatory Authority issuing any such License to rescind or otherwise modify any such Governmental Approval, and (iii) neither Seller nor the Project Company, as applicable, is in default (or with the giving of notice or lapse of time or both, would be in default) under any such Governmental Approval and all information set forth in the applications and other documents submitted by or on behalf of Seller or each such Project Company to any Governmental or Regulatory Authority in connection with any Governmental Approval described in schedule (vi) is true and correct in all material respects.

(B) Schedule (vi) contains a true and complete list of all Licenses currently held by Project Company relating to the Project, and a true and complete list of all proposed Licenses relating to the Project that have been applied for but have not yet been obtained, setting forth for each such License the grantor, the grantee, the function and the renewal date of each. Each such License is valid, binding, and in full force and effect and has not been amended or modified since the date of this Agreement except as disclosed in schedule (vi) and no action has been taken or proposed by any Governmental or Regulatory Authority issuing any such License to rescind or otherwise modify any such License.

(C) No claim is pending or to the Knowledge of Seller threatened, and to the Knowledge of Seller no event or condition exists that could reasonably lead to the revocation or material modification of any Governmental Approval, to a denial of any application for Governmental Approval, to a declaration that any Governmental Approval is invalid, or to the denial of any request for renewal of a Governmental Approval.

(D) All Governmental Approvals, if any, necessary to permit Seller and the Project Company to perform their obligations under this Agreement and to consummate the transactions contemplated hereby shall have been duly obtained, made, or given and are in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this

Agreement have occurred

(vii) Compliance with Laws and Orders.

~~To the Knowledge of Seller, the~~The Project Company is not in violation of or in default under any Law or Order applicable to the Project Company or any of its Assets. Neither Seller nor the Project Company has received any written notice that any ~~material~~ violation of any Law or Order applicable to the Project Company or the Assets has been alleged.

(viii) Books and Records; Minutes.

(A) Project Company maintains controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with the terms and provisions of its governing documents; and (ii) use of assets is permitted only in accordance with sufficient authorization.

(B) The records and minute books, or equivalent records and documents, of Project Company have been kept and maintained in all material respects as required by law, and contain true, correct, and complete copies of the governing documents, all membership resolutions and other similar membership records of such Project Company through the date hereof.

(ix) Schedule of Costs and Commitments; Absence of Certain Events.

Seller has delivered to Purchaser true and complete copies of the Schedule of Costs and Commitments for Project Company attached hereto as schedule ARTICLE 3(ix) (“**Schedule of Costs and Commitments**”). The Schedule of Costs and Commitments has not been prepared in accordance with GAAP. Since the date of the Schedule of Costs and Commitments, the Business of the Project Company has been operated in all material respects in the ordinary course of business and there has not been any change in the Business or Condition of the Project Company that would reasonably be expected to have a Material Adverse Effect.

(x) Condition of Projects.

Except as set forth in schedule (x), to Seller’s Knowledge there is no existing physical impediment, damage, structural defect or other condition in connection with the Project or the Site that could have a Material Adverse Effect upon the operations of the Project or the ability of Seller to comply with its obligations under this Agreement or the ability of the Project Company to comply with its obligations under any Contracts to which it is a party. To Seller’s Knowledge, no facts, proposals, plans, studies, or investigations exist which could adversely affect the expected development, ownership, construction, operation, maintenance or use of the Project or of any of the Assets.

(xi) [Intentionally Omitted].

(xii) Taxes.

Prior to the date of this Agreement and through the Closing Date, and except as set forth in Schedule 3.12:

(A) Tax Returns Filed. (i) all Tax Returns, if any, required to be filed by or with respect to Project Company or with respect to its assets or operations have been timely and properly filed or a valid election has been made to extend the time for filing; (ii) all such Tax Returns are true, correct, and complete in all material respects; (iii) all Taxes shown to have become due on such Tax Returns or otherwise due (whether or not shown as due on any Tax Return) with respect to such Project Company or its assets or operations have been timely paid; and (iv) adequate reserves have been established on Seller's financial statements for all Taxes attributable to periods prior to the Closing Date but not yet due. Project Company or Seller (with respect to such Project Company or its assets or operations) has withheld and paid over to the appropriate Taxing Authority all Taxes which it is required to withhold from amounts paid or owing to any employee, independent contractor, equity holder, creditor, or other third party. In accordance with Treasury Regulations section 301.7701-2, the Project Company is automatically, without affirmative election by the Seller, treated as a corporation for U.S. federal income tax purposes.

(B) No Known Claims. There are no suits, actions, claims, investigations, inquiries, or proceedings pending or, to the Knowledge of Seller, threatened against the Project Company or with respect to its assets or operations in respect of Taxes. The Tax Returns of Project Company or with respect to its assets or operations have not been audited by any Taxing Authority and are not in the process of being audited. There is no Tax deficiency outstanding, proposed, or assessed against the Project Company or with respect to its assets or operations, and neither Seller nor the Project Company has received any notice from any Taxing Authority that such Project Company should have filed Tax Returns in a jurisdiction in which it failed to file. There are no Liens for Taxes upon the assets of the Project Company, except for Permitted Liens.

(C) No Waivers. The Project Company has not executed any outstanding waivers or comparable consents regarding the application of the statute of limitations for any Taxes or Tax Returns (and no extensions have been executed on its behalf). No deficiency for any Taxes has been suggested, proposed, asserted or assessed against the Project Company or with respect to its assets or operations that has not been resolved and paid in full.

(D) No Power of Attorney. No power of attorney currently in force has been granted by Seller or the Project Company with respect to the Taxes of such Project Company or with respect to its assets or operations.

(E) No Rulings. Neither Seller with respect to the Project Company or with respect to its assets or operations nor the Project Company has received any ruling of a Taxing Authority relating to Taxes or has withdrawn a ruling request before the ruling was issued.

(F) No Agreements. No agreement as to indemnification for, contribution to, or payment of Taxes exists between the Project Company and any other Person; the Project Company has no liability for Taxes of any person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law) or as a transferee or successor, by contract or otherwise. No Project Company is a party to any tax allocation or tax sharing agreement or tax indemnity or similar arrangement.

(G) Tax Returns. Seller has made available to Purchaser as part of the Books and Records, complete and accurate copies of all Tax Returns, if applicable, and all amendments thereto, filed by or on behalf of Project Company.

(H) Miscellaneous. Neither the Project nor any phase or portion thereof has been placed in service for United States federal income tax purposes.

(xiii) Legal Proceedings.

Except as set forth in schedule (xiii):

(A) there are no Actions or Proceedings pending or, to the Seller's Knowledge, threatened against, relating to or affecting the Seller, the Project Company or any of their respective Assets which could reasonably be expected to: (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement; or (ii) individually or in the aggregate with any other such Actions or Proceedings, adversely affect the business of the Project Company, and

(B) there are no Orders or investigations outstanding against or affecting the Project Company ~~which, individually or in the aggregate with or any other such Orders, could adversely affect the business of such Project Company~~ its respective properties.

(xiv) Employees; Benefit Plans; ERISA.

The Project Company has never had any employees. None of the Project Company or any of its ERISA Affiliates has incurred any liability under an employee benefit plan subject to Title IV of ERISA, including any obligation under a "multiemployer plan," as such term is defined in Section 3(37) of ERISA, and no lien has been imposed under Section 412(n) of the Code or Section 302(f) of ERISA on the Assets of the Project Company or any of its ERISA Affiliates. In addition, neither the Project Company nor any of its ERISA Affiliates has engaged in any transaction or has taken or failed to take any action in connection with which the Project Company or its ERISA Affiliates would reasonably be expected to be subject to any liability for either a civil penalty assessed pursuant to Section 409 or 502(i) of ERISA or a tax imposed pursuant to Section 4975(a) or (b), 4976 or 4980B of the Code.

(xv) Real Property.

(A) Schedule (xv) contains a true and correct list of: (i) each parcel of real property owned by Project Company; (ii) each parcel of real property leased by Project Company (as lessor or lessee); (iii) each parcel of real property as to which Project Company has an option to acquire an interest therein; (iv) each parcel of real property with respect to which Project Company has any Other Real Property Interest (clauses (i) through (iv) collectively, "**Real Property Interests**" or "**Real Property**"); (v) all Liens (other than Permitted Liens) relating to or affecting any parcel of real property referred to in clause (i), (ii), (iii) or (iv), and (vi) the owner, lessor, lessee, and other tenants, as applicable, of each parcel of real property referred to in clauses (i), (ii), (iii) and (iv).

(B) Project Company is in possession of each parcel of Real Property owned or leased by it.

(C) Except as set forth in schedule (xv), Project Company has a valid and subsisting leasehold estate in and the right to quiet enjoyment of each parcel of the Real Property leased by it as lessee referred to in clause (ii) of paragraph (a) above for the full term of the

applicable lease. Each Lease for such Real Property is a legal, valid, and binding agreement of such Project Company, enforceable against such Project Company in accordance with its terms, and to Seller's Knowledge of each other Person that is a party thereto, and there exists no default (or to Seller's Knowledge, any condition or event which, after notice or lapse of time or both, would constitute a default) thereunder. There have been no written or oral amendments to any such Lease. Except for such Lease, there are no written or oral agreements between the Project Company and any other party regarding: (i) the matters set forth in or the transactions contemplated by the Lease; or (ii) any Assets of the Project Company. Memoranda of such Lease have been or will be within thirty (30) days of the Closing Date properly recorded in accordance with applicable Laws. Prior to the date on which Seller recorded the Memorandum of Lease, there were, to Seller's Knowledge, no Liens affecting the underlying real property that would individually or in the aggregate have a Material Adverse Effect on the further development, construction or operation of the Project.

(D) Except as set forth in schedule (xv), Seller or the Project Company has acquired all of the Real Property Interests, Other Real Property Interest, rights in real property utilities and other services necessary for the development, construction, operation and maintenance of each Project as contemplated hereunder.

(E) Except as set forth in schedule (xv), and subject to any Governmental Approval required to be obtained as disclosed in Schedule 4.04, or which has already been obtained as disclosed in schedule 3.06, Seller has no Knowledge that the Project and all improvements located thereon does not comply with all existing subdivision, land use, and zoning ordinances, regulations, and restrictions (including, without limitation any of the foregoing related to noise or nuisance).

(F) Seller has delivered to Purchaser prior to the date of this Agreement, true and complete copies of all deeds, leases, mortgages, deeds of trust, title insurance policies, title commitments or reports, surveys, topographic maps, meteorological data, studies and similar documents, and all amendments thereof, that have been prepared, executed, recorded, or issued by or to Seller or Seller's Affiliates and in Seller or Seller's Affiliate's possession with respect to each parcel of real property described in schedule 3.15

(G) Except as set forth in schedule (xv), Seller has not received notice, oral or written of, and Seller does not have any Knowledge that:

(i) there are any pending or threatened utility or governmental proceedings in eminent domain, for rezoning or otherwise, which would affect any of the Real Property Interests or Other Real Property Interests;

(ii) any of the Real Property Interests or any of Other Real Property Interests or any portion thereof or any improvements, or the uses conducted therein or thereon, violate any Laws or Orders;

(iii) there are any pending or threatened public improvements or special assessments that could reasonably be expected to affect any of the Real Property Interests or any of Other Real Property Interests or any portion thereof or any improvements, or that could reasonably be expected to result in any charge being levied or assessed or in the creation of any lien;

(iv) there is any plan, study or effort by any governmental agency to widen, modify or realign any street or road providing access to the Site or any portion thereof, or that in any other way could reasonably be expected to materially affect the current or intended use thereof;

(v) there is any defect or condition of the soil or land, including but not limited to any wetlands, which could reasonably be expected to materially impair the use of any of the Real Property Interests or any of Other Real Property Interests, the construction of any of the Projects, the improvements, or any portion thereto;

(vi) there are any encroachments of substations, transmission facilities, improvements or easements, or other interests in favor of third parties, nor any encroachments onto the Site;

(vii) there are any inaccuracies or omissions in any survey, map, plan, preliminary report or title commitment, delivered to Purchaser by or on behalf of Seller;

(viii) there are any mining, mineral or water extraction or development projects in progress or planned to commence on or under any of the Sites or any portion thereof; or

(ix) there are any commitments or agreements with any governmental agency or public or private utility that would have a Material Adverse Effect on any of the Real Property Interests or any of Other Real Property Interests or any portion thereof or any improvements.

(H) Except as disclosed in schedule (xv), to Seller's Knowledge there are no unrecorded farm leases, manure easements, leases, tenancies, subleases, licenses, occupancies or co-tenancies in effect, oral or written, related to any of Real Property Interests or any of Other Real Property Interests or any portion thereof of any improvements.

(I) Except as disclosed in schedule (xv), to Seller's Knowledge, there are no other facts or conditions (including TV/radio/telecommunications interference, noise violation or other such nuisance) relating to any of the Real Property Interests or any of Other Real Property Interests or any portion thereof or any improvements that could have a Material Adverse Effect on the Project.

(J) Seller does not have any Knowledge that building permits for the construction of the Project will not be granted in the ordinary course of business.

(K) Except as disclosed in schedule (xv), there are no rents, royalties, fees, or other amounts, including surface damages currently due or payable by Seller in connection with the Lease, tenancies, licenses, occupancies or co-tenancies related to any of the Real Property Interests or any of Other Real Property Interests or any portion thereof or any improvements.

(xvi) Contracts.

(A) Schedule 3.16 contains ~~a true, correct~~ an accurate and complete list of and Seller has provided to Purchaser copies of all Contracts.

(B) Each Contract ~~required to be~~ disclosed in Schedule (xvi) is in full force and effect, has not been amended or modified since the date of such Contract and constitutes a legal, valid, and binding agreement, enforceable in accordance with its terms, of the Project Company and, to the Seller's Knowledge, of each other party thereto.

(xvii) Personal Property.

Schedule (xvii) sets forth an accurate and complete listing of all personal property, if any: (i) owned by Project Company; or (ii) leased by Project Company, in each case as of the date of this Agreement (such personal property, together with all additions, replacements and supplements thereto, collectively, "**Personal Property**"). Project Company has good and valid title or a good and valid lease to all such Personal Property, free and clear of all Liens, other than Permitted Liens.

(xviii) Intellectual Property.

Schedule (xviii) contains an accurate and complete list of and Seller has provided to Purchaser copies of, all patents, patent applications, registered trademarks, trademark applications, trade dress, trade secrets, registrations, copyrights, computer programs, databases and industrial designs (collectively, "**Intellectual Property**") owned by or licensed to Project Company or used by Project Company or in respect of its ownership, operation or maintenance of the Project. No Project Company is infringing upon any patent, copyright, trademark right or intellectual property right of any Person and no claim adverse to the interests of each such Project Company in the Intellectual Property has been made, whether in litigation or any Action or Proceeding or otherwise.

(xix) Assets.

(A) Schedule (xix) sets forth all of Project Company's Assets and other rights and interests other than Licenses, Real Property Interests, and Contracts. Neither the Seller nor any of its Affiliates (other than the Project Company) or any third party owns any Assets, tangible or intangible, which are used in the business of the Project Company.

(B) Project Company has either good and valid title or a good and valid leasehold interest with respect to all of its Assets (including, without limitation Licenses, Real Property Interests, and Contracts), free and clear of all Liens of every kind, except for Permitted Liens. Without limiting the foregoing, all Licenses (including but not limited to all permits required under any Environmental Law) and other authorizations from any Governmental or Regulatory Authority, rights under interconnections studies, and rights under Contracts related to the Project that are necessary and/or useful to own or operate such Project are held by the Project Company.

(xx) Resource Data.

Schedule (xx) contains a true and complete list of any and all of the resource data in respect of the Project ("**Resource Data**"). With respect to each item of Resource Data listed on section (xx):

(a) Seller possesses all right, title, and interest in and to the item of Resource Data, free and clear of any Lien or other restriction;

(b) Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in such item of Resource Data;

(c) there are no disputes, oral agreements, or forbearance programs in effect as to such item of Resource Data;

(d) the item of Resource Data is not subject to any Order;

(e) no Action or Proceeding is pending, or to the Knowledge of Seller, is threatened, which challenges the legality, validity, enforceability, or use of such item of Resource Data; and

(f) Seller has not agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item of Resource Data.

(xxi) Studies and Reports.

Schedule (xxi) contains a true and complete list of any and all studies and reports in respect of the Project (“**Studies and Reports**”) and, except as set forth on such schedule, to Seller’s Knowledge, there has been no change in circumstances in any material matters described in the Studies and Reports that would have a Material Adverse Effect on the Business or Condition of the Project Company.

(xxii) Environmental Matters.

(A) Except as has been disclosed in Schedule (xxi), neither the Seller, neither the Project Company, nor any of Seller’s Affiliates possesses or has possessed, any information relating to any non-compliance with Environmental Laws at the Site, nor is there nor has there been, to the Seller’s Knowledge, any Environmental Condition or Hazardous Activity at the Site.

(B) There have been no environmental investigations, studies, audits, tests, reviews, or other analyses conducted by, or that are in the possession of, the Project Company or any of their respective Affiliates in relation to the Site which have not been delivered to Purchaser prior to the Effective Date.

(C) Neither the Seller, the Project Company nor any of their respective Affiliates has received any written notice of any Environmental Liability or any alleged violation of any Law involving the protection of the environment or hazardous waste or non-compliance with any Environmental Laws with respect to the Project Company, the Project or the Site.

(xxiii) No Undisclosed Liabilities; Permitted Liens.

Project Company has no Liabilities except for Liabilities reflected or reserved against in the financial statements of such Project Company, provided to Purchaser, and Schedule (ix), Schedule of Costs and Commitments; Absence of Certain Events. None of the Assets of the Project Company are subject to any Liens, other than Permitted Liens, which are disclosed in Schedule (xxiii), or, with respect to Real Property Interests, liens consisting of zoning restrictions, easements, leases

and mortgages granted by the underlying landowners of the Site or other restrictions of record on the use of real property, which liens do not have a Material Adverse Effect or which have otherwise been addressed and/or disclosed in schedule 3.06 or 4.04 in connection with any required approvals.

(xxiv) Insurance.

Schedule (xxiv) contains a true and complete list of all insurance policies currently in effect that insure the business, operations or employees of Project Company or affect or relate to the ownership, use or operation of any of the Assets of such Project Company and that: (i) have been issued to such Project Company; or (ii) have been issued to any Person (other than the Project Company) for the benefit of or otherwise provide coverage to such Project Company. The insurance coverage provided by any of the policies described in clause (i) above will not terminate or lapse with respect to the period prior to Closing by reason of the transactions contemplated by this Agreement. Each policy listed in schedule (xxiv) is valid and binding and in full force and effect, has not been amended or modified since the date of this Agreement through the Closing Date, no premiums due thereunder have not been paid and no Project Company has received any notice of cancellation or termination in respect of any such policy and is not in default thereunder. Taken together, the insurance policies listed in schedule (xxiv) are sufficient for compliance with all Contracts to which the Project Company is a party or any of its Assets are bound.

(xxv) Bankruptcy; Solvency.

(A) Seller has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution, or similar relief under any federal or state bankruptcy, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties (including the Assets and the Other Assets). Seller has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution, or similar relief under any federal or state bankruptcy, insolvency, or other debtor relief law.

(B) Seller is not now insolvent and will not be rendered insolvent by the sale of the Interests under this Agreement. As used in this section, “insolvent” means that the sum of the debts and other probable Liabilities of Seller exceeds the present fair saleable value of Seller’s assets. Immediately after giving effect to the consummation of the Closing: (i) Seller will be able to pay its Liabilities as they become due in the usual course of its business; (ii) Seller will not have unreasonably small capital with which to conduct its present business; (iii) Seller will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and to the Knowledge of Seller threatened litigation, final judgments against Seller in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Seller will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Seller. The cash available to Seller, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

(xxvi) Regulatory Status.

Neither the Seller nor the Project Company is an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder or an “investment advisor” within the meaning of such Investment Company Act.

(xxvii) Affiliate Transactions.

Except as has been disclosed in Schedule (xxvii), there are no pending transactions or Liabilities existing between the Project Company, on the one hand, and the Seller or, if applicable, any Seller’s members, officers, directors, or Affiliates, on the other hand.

(xxviii) Brokers.

All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by the Seller directly with Purchaser without the intervention of any Person on behalf of the Seller in such manner as to give rise to any valid claim by any Person against Purchaser or the Project Company for a finder’s fee, brokerage commission or similar payment.

(xxix) Other Offers to Sell.

There is no current outstanding offer to directly or indirectly sell any interest in the Projects, the Assets or, Project Company to any Person other than Purchaser and Affiliates of Purchaser.

(xxx) Bank Accounts.

The Project Company has no bank accounts.

**ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to the Seller as follows on the date hereof and as of the Closing Date:

(i) Existence.

Purchaser is a limited liability company duly organized, validly existing, and in good standing under the Laws of the state of [State]. Purchaser has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(ii) Authority.

The execution and delivery by Purchaser of this Agreement and the performance by Purchaser of its obligations hereunder, have been duly and validly authorized, executed and delivered by Purchaser. This Agreement constitutes the legal, valid, and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except as limited by the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors and general principles of equity (regardless of whether such enforceability is

considered in a proceeding in equity or at law).

(iii) No Conflicts.

The execution and delivery by Purchaser of this Agreement does not, and the performance by Purchaser of its obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(A) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the limited liability company agreement of Purchaser or any other agreement or obligation of Purchaser,

(B) subject to obtaining the consents, approvals, and actions, making the filings and giving the notices disclosed in schedule ARTICLE 4(iii), conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Purchaser or any of its Assets, or

(C) (i) conflict with or result in a violation or breach of; (ii) constitute (with or without notice or lapse of time or both) a default under; (iii) require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of; (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to; or (v) result in the creation or imposition of any Lien upon Purchaser or any of its Assets or Real Property under, any Contract or License to which Purchaser is a party or by which any of its Assets is bound.

(iv) Governmental Approvals and Filings.

Except as disclosed in schedule ARTICLE 4(iv), no Governmental Approval on the part of Purchaser is required in connection with the execution, delivery, and performance of this Agreement or the consummation of the transactions contemplated hereby.

(v) Legal Proceedings.

There are no Actions or Proceedings pending or, to the Knowledge of Purchaser, threatened against, relating to, or affecting Purchaser or any of its Assets which could reasonably be expected to result in the issuance of an Order restraining, enjoining, or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

(vi) Purchase for Investment.

The Interests will be acquired by Purchaser for its own account for the purpose of investment, it being understood that the right to dispose of such Interests shall be entirely within the discretion of Purchaser (or such assignee, as the case may be). Purchaser (or such assignee, as the case may be) will refrain from transferring or otherwise disposing of any of the Interests, the Assets or any interest therein, in such manner as to cause Seller to be in violation of the registration requirements of the Securities Act of 1933, as amended, or any applicable state securities or blue-sky laws rules, or regulations, as amended.

(vii) Brokers.

All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Purchaser directly with Seller without the intervention of any Person on behalf of Purchaser in such manner as to give rise to any valid claim by any Person against Seller, the Project Company or any Subsidiary for a finder's fee, brokerage commission or similar payment.

**ARTICLE 5
CLOSING OBLIGATIONS**

On the Closing Date (except as otherwise specified herein), there shall be delivered to Seller and Purchaser, as applicable, the following certificates and other Contracts, documents and instruments:

(i) Assignment Agreement.

Purchaser shall have received an executed Assignment and Assumption Agreement from Seller for Project Company, dated as of the Closing Date, substantially in the form of Exhibit A.

(ii) Seller Certificates.

Purchaser shall have received executed certificates from the Seller, dated as of the Closing Date, substantially in the forms of Exhibit D-1, Exhibit D-2.

(iii) Purchaser Certificate.

The Seller shall have received a certificate from the Purchaser, dated as of the Closing Date, substantially in the form of Exhibit E.

(iv) Resignations.

Purchaser shall have received resignations of all officers and managers of Project Company, if any, effective at or prior to Closing, each in substantially the form of Exhibit F.

(v) Search Reports.

Purchaser shall have received Uniform Commercial Code search reports for all offices in which Uniform Commercial Code financing statements would be filed with respect to any: (a) Interests; or (b) the Assets of Project Company, and judgment and tax liens searches in appropriate jurisdictions for Project Company and Seller.

(vi) Project Assets, Licenses and Permits.

Seller and its Affiliates shall have transferred to the Project Company any and all Real Property and Assets in which Seller or its Affiliates have any interest and which are related to the Project. Without limiting the foregoing, all Licenses (including but not limited to all permits required under any Environmental Law) and other authorizations from any Governmental or Regulatory Authority, rights under interconnections studies, and rights under Contracts related to the Project that

are presently held by Seller or any of its Affiliates (other than the Project Company) and that are necessary and/or useful to own or operate the Project shall have been transferred to the Project Company prior to Closing and, to the extent that any such Licenses or other authorizations or rights under interconnection studies and Contracts related to the Project are not transferable to the Project Company prior to the Closing, Purchaser shall have received: (a) evidence, in form satisfactory to Purchaser in its reasonable discretion that all such Licenses or other authorizations or rights under interconnection studies (and the rights under any application therefor) and the Contracts related to the Project that are not presently held by the Project Company are transferable to the Project Company subsequent to the Closing; and (b) agreements, in form and substance satisfactory to Purchaser in its reasonable discretion, from the holder or holders of such Licenses, interconnection studies (and the rights under any applications therefor) and Contracts related to the Project to use their best efforts to effect the transfer thereof to the applicable the Project Company at the earliest practicable time.

(vii) Payment of Fees.

Seller shall fully pay all fees and expenses of advisors and investment bankers incurred by their participation in the potential sale of the Project Company or shall have delivered to Purchaser a written release from each such advisor and investment banker, if any, of any claims therefor against Purchaser, the Project Company, and their Affiliates.

(viii) REC Agreement.

Purchaser and Project Company will have executed and delivered the REC Agreement.

(ix) Community Fund Agreement.

Purchaser and Project Company will have executed and delivered the Community Fund Agreement.

(x) Contract Security.

Purchaser shall have paid over to Seller Contract Security under the terms of the REC Agreement in amounts required thereunder.

(xi) Other Matters.

Purchaser shall have received such other documents and certificates as Purchaser shall [have](#) reasonably requested by the Seller.

**ARTICLE 6
POST-CLOSING MATTERS**

(i) Seller Call Option. Purchaser hereby grants to Seller an irrevocable, transferrable option (the “**Call Option**”) to repurchase the Interests subject to and in accordance with the terms set forth below.

(A) If an Interconnection Agreement for the Project has not been executed via signature, or has not otherwise come into effect via Federal Energy Regulatory Commission (“FERC”) approval of an unsigned version of the IA duly submitted to FERC, on or prior to the IA Drop Dead Date, Seller may, in its sole discretion, deliver to Purchaser a written, unconditional and irrevocable notice (the “**IA Call Notice**”) that Seller desires to exercise its Call Option to repurchase the Interests free and clear of any and all Liens. Upon Purchaser’s receipt of the IA Call Notice, Seller and Purchaser shall execute a membership interest purchase agreement within ninety (90) days thereof for a purchase price equal to the Option Price, and on other terms and conditions customarily found within the solar photovoltaic electric generating industry in New York. The Purchaser and the Seller each shall take all actions as may be reasonably necessary to consummate the sale and repurchase contemplated by this Section ARTICLE 6(i)(A), including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate. Purchaser hereby appoints Seller its attorney-in-fact to execute such documents and other instruments as are necessary to give effect to the provisions of this Section ARTICLE 6(i)(A) which appointment is coupled with an interest and, therefore, irrevocable. In the event the Seller does not deliver an IA Call Notice to Purchaser on or before 5:00 pm Eastern Time on the date that is thirty (30) days after the IA Drop Dead Date (such date, the “**Option Expiration Date**”), the Call Option shall expire as of 5:00 pm Eastern Time on such Option Expiration Date.

(ii) Transfer of Interests. Purchaser shall not, without Seller’s prior written consent, sell, transfer, assign or convey the Interest, or any of Purchaser’s right, title or interest therein acquired pursuant to this Agreement, until the expiration of the Option Period.

(iii) Extension of IA Drop Dead Date. Prior to the IA Milestone Date, Purchaser may request, and Seller shall not unreasonably deny, an extension of the IA Drop Dead Date for any bona-fide Utility Delay, provided that (i) Purchaser notifies Seller of such Utility Delay within five days of Purchaser’s discovery of such Utility Delay, (ii) Purchaser provides documentation to Seller substantiating the Utility Delay, and (iii) Purchaser demonstrates to Seller that Purchaser has undertaken reasonable efforts in good faith to mitigate the impact of any such Utility Delay; and (iv) Purchaser provides Seller weekly updates on Purchaser’s efforts to resolve any such Utility Delay. The Purchaser shall not be entitled to an extension of the IA Drop Dead Date unless it continues to adhere to the requirements of this Section 6.03 during any Utility Delay.

(iv) PILOT. Purchaser shall enter into the PILOT with the St. Lawrence County Industrial Development Authority within a reasonable time of the Effective Date.

ARTICLE 7 TAX MATTERS

(i) Certain Taxes.

(A) All real property Taxes, personal property Taxes, and similar obligations that are due or become due with respect to the assets of Project Company or the Business or Condition of such Project Company and for which constitute a legal obligation of such Project Company for tax periods within which the Closing Date occurs (collectively, “**Apportioned Obligations**”) shall be apportioned between the Seller, on the one hand, and Purchaser, on the other

hand, as of the Closing Date. The Seller shall be responsible for the portion of such Apportioned Obligations attributable to the period or portion of period ending on the Closing Date. Purchaser shall be responsible for the portion of such Apportioned Obligations attributable to the period or portion of period ending after the Closing Date. Each Party shall cooperate in assuring that Apportioned Obligations that are the responsibility of the Seller pursuant to the preceding three (3) sentences are paid by the Seller, and that Apportioned Obligations that are the responsibility of Purchaser pursuant to the preceding three (3) sentences shall be paid by Purchaser. If any refund, rebate, or similar payment is received by the Project Company for any real property Taxes, personal property Taxes, or similar obligations that are Apportioned Obligations, such refund shall be apportioned between the Seller and Purchaser as aforesaid on the basis of each Party's respective ownership of such Project Company during the applicable tax period. If it is determined subsequent to the Closing Date that additional real property Taxes, personal property Taxes, or similar obligations that are Apportioned Obligations are required to be paid for the applicable Tax period in which the Closing Date falls, such additional Taxes will be apportioned between the Seller and Purchaser as aforesaid on the basis of each Party's respective ownership of such Project Company during the applicable Tax period.

(B) (1) For any Taxes with respect to which the taxable period of the Project Company ends on or before the Closing Date, the Seller shall timely prepare and file with the appropriate authorities all Tax Returns required to be filed by such Project Company. Purchaser shall timely prepare and file with the appropriate authorities all other Tax Returns required to be filed by the Project Company.

(2) The Seller shall indemnify and hold Project Company and Purchaser harmless, on an After-Tax Basis, from and against any and all Taxes which may be suffered or incurred relating to such Project Company or the ownership, sale, operation, or use of the Assets for or with respect to: (i) the period preceding the Closing Date (including any liability for Taxes of the Seller that becomes a liability of Purchaser under any bulk transfer law of any jurisdiction); (ii) any income Taxes imposed on the Seller resulting from the sale of the Interests, or the Assets to Purchaser and any other transaction herein contemplated; (iii) any liability for Taxes attributable to the breach by the Seller of any covenant or representation; (iv) any liability for Taxes which is imposed on the Project Company under Section 1.1502-6 of the U.S. Department of Treasury Regulations promulgated under the Code (or under any comparable provision of state or local Law imposing several liability upon members of a consolidated, combined, affiliated or unitary group); and (v) any combination of (i) through (iv). The Purchaser shall indemnify and hold Project Company and Seller harmless, on an After-Tax Basis, from and against any and all Taxes which may be suffered or incurred relating to such Project Company or the ownership, sale, operation, or use of the Assets for or with respect to: (i) the period after the Closing Date; (ii) any income Taxes imposed on the Purchaser resulting from the purchase of the Interests, or the Assets from Seller and any other transaction herein contemplated; and (iii) any liability for Taxes attributable to the breach by the Purchaser of any covenant or representation.

(3) Notwithstanding ARTICLE 9, *INDEMNIFICATION*, the representations made by the Seller as to Tax matters in Section 3.13, Taxes, and Seller's indemnity obligations pursuant to this Section (i)(b) shall survive the Closing until the tolling of the applicable statute of limitations and requirements, and shall not be subject to the limitations otherwise provided in ARTICLE 9, *INDEMNIFICATION*. Purchaser shall notify the Seller within thirty (30) days of receipt of written notice of any pending or threatened Tax examination, audit or other administrative or judicial proceeding relating to the Project Company that could reasonably be expected to result in an

indemnification obligation of the Seller (“**Contested Taxes**”). If Purchaser fails to provide such notice to the Seller, Purchaser shall not be entitled to indemnification for such Contested Taxes if the failure shall preclude the Seller from contesting the Tax. If a Contested Tax relates to any period ending prior to the Closing Date or to any Taxes for which the Seller are liable in full hereunder, the Seller shall, at their own expense, control the defense and settlement of the Tax contest. If the Contested Tax relates to any period beginning on or after the Closing Date or to any Taxes for which Purchaser are liable in full hereunder, Purchaser shall, at their own expense, control the defense and settlement of such Tax contest. The Party not in control of the defense shall have the right to observe the conduct of any Tax contest at its own expense, including through its own counsel and other professional experts. Purchaser, on the one hand, and the Seller, on the other hand, shall jointly represent the Project Company with respect to any Contested Tax relating to a period that includes the Closing Date, and the fees and expenses related to such representation shall be borne equally by Purchaser on the one hand, and the Seller, on the other hand. Any refunds or rebates of Taxes that relate to any period ending on or prior to the Closing Date shall be for the account of the Seller while all other refunds or rebates shall be for the account of Purchaser.

(C) The Seller, Purchaser, and Project Company shall reasonably cooperate, and shall cause their respective Affiliates, employees, and agents reasonably to cooperate, in preparing and filing all Tax Returns, including maintaining and making available to each other all records that are necessary for the preparation of any Tax Returns that the party is required to file under this ARTICLE 7, and in resolving all disputes and audits with respect to such Returns.

(D) All sales, use, transfer, real property transfer, recording, gains, stock transfer and other similar taxes and fees (“**Transfer Taxes**”), if any, arising out of or in connection with the transactions effected pursuant to this Agreement shall be borne one-half by Seller and one-half by Purchaser. Each Party shall indemnify, defend and hold harmless the other Party on an After-Tax Basis with respect to such Party’s Transfer Tax liability. Purchaser shall file all necessary documentation and Tax Returns with respect to such Transfer Taxes.

(E) For purposes of any state transfer tax law, Purchaser and Sellers acknowledge and agree that they shall treat the transactions contemplated by this Agreement as a sale of membership interests.

ARTICLE 8 SURVIVAL, NO OTHER REPRESENTATIONS

(i) Survival of Representations, Warranties, Covenants and Agreements.

The representations and warranties of Seller and Purchaser contained in this Agreement will survive the Closing through and including that date that is twelve (12) months from the Closing Date (it being understood that representations and warranties relate to the applicable date or period of time for which such representations and warranties are made and not to subsequent periods), except for the representations and warranties contained in Section 3.13, Taxes, and ARTICLE 3(xxii), Environmental Matters, which shall survive until the end of the period of the applicable statute of limitations and the representations and warranties in Sections ARTICLE 3(i), Existence; ARTICLE 3(ii), Authority; ARTICLE 3(iii), Interests; ARTICLE 3(iv), Subsidiaries, No Other Business; ARTICLE 3(vi), Governmental Approvals and Filings; ARTICLE 4(i), Existence; and ARTICLE 4(ii), Authority; which shall survive without limitation as to time. The covenants and agreements of the

Seller and Purchaser contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing indefinitely or for the shorter period explicitly specified therein. Notwithstanding the preceding sentences, any breach of a representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought prior to the date such representation, warranty, covenant or agreement would have terminated pursuant to the preceding sentences.

(ii) No Other Representations.

Notwithstanding anything to the contrary contained in this Agreement, Purchaser agrees that the Seller is not making any representation or warranty whatsoever, express or implied, except those representations and warranties contained in ARTICLE 3, REPRESENTATIONS AND WARRANTIES OF SELLER, and in any certificate delivered pursuant to ARTICLE 3, CLOSING OBLIGATIONS. Notwithstanding anything to the contrary contained in this Agreement, the Seller agrees that Purchaser is making no representation or warranty whatsoever, express or implied, except those representations and warranties contained in ARTICLE 4, REPRESENTATIONS AND WARRANTIES OF PURCHASER and in any certificate delivered pursuant to ARTICLE 3, CLOSING OBLIGATIONS.

**ARTICLE 9
INDEMNIFICATION**

(i) Indemnification.

(A) Subject to the other Sections of this ARTICLE 9, the Seller agrees to indemnify Purchaser Indemnified Parties in respect of, and hold each of them harmless from and against, any and all Losses (on an After-Tax Basis) suffered, incurred, or sustained by any of them or to which any of them become subject, resulting from, arising out of, or relating to:

(i) breach of representation or warranty contained in this Agreement except those in Section 3.13, Taxes;

(ii) any non-fulfillment of or failure to perform any covenant or agreement contained in this Agreement on the part of Seller or the Project Company; or

(iii) Losses from claims brought against the Project Company by Persons who were the officers, members, directors, or managers, or partners of the such Project Company prior to the Closing and which claims arise from such Persons' role as officer, member, director, or manager, or partner of the such Project Company through the Closing,

(B) Subject to the other Sections of this ARTICLE 9, Purchaser agrees to indemnify Seller Indemnified Parties in respect of, and hold each of them harmless from and against, any and all Losses (on an After-Tax Basis) suffered, incurred, or sustained by any of them or to which any of them becomes subject, resulting from, arising out of, or relating to: (i) any breach of representation or warranty contained in this Agreement; (ii) any non-fulfillment of or failure to

perform any covenant or agreement contained in this Agreement on the part of Purchaser; or (iii) any liabilities incurred by the Project Company after the Closing Date.

(C) Notwithstanding anything to the contrary contained in this Agreement, no amounts of indemnity shall be payable as a result of any claim in respect of a Loss arising under this Section (i) by an Indemnified Party:

(i) if, and to the extent that: (A) in the case of a claim by a Seller Indemnified Party, such Seller Indemnified Party and all other Seller Indemnified Parties would receive payments pursuant to this Agreement, including in respect of claims made under Section ARTICLE 9(i)(B) hereof, in an aggregate amount that would exceed an amount equal to the total of the Purchase Price; and (B) in the case of a claim by a Purchaser Indemnified Party (other than in respect of such Loss or claim arising out of, resulting from or relating to any breach by actual fraud, gross negligence, or willful misconduct), such Purchaser Indemnified Party and all other Purchaser Indemnified Parties would receive payments in respect of claims made under Section ARTICLE 9(i)(A) in an aggregate amount that would exceed an amount equal to the total of the Purchase Price,

(ii) if the Indemnified Party has failed to give the Indemnifying Party a Claim Notice or Indemnity Notice, as applicable, with respect to such claim and Loss, setting forth in reasonable detail the specific facts and circumstances pertaining thereto, within a reasonable period of time after which the Indemnified Party discovered or reasonably should have discovered such claim and the Indemnifying Party has been prejudiced by the delay in the delivery of such notice, or

(iii) to the extent it arises from or was caused by the Indemnified Party's actual fraud, gross negligence, or willful misconduct.

(D) Except as otherwise provided for in this Agreement and for Losses: (i) relating to Taxes (which shall be governed by the provisions of ARTICLE 7, TAX MATTERS), and (ii) resulting from the fraud or intentional misrepresentation of the Parties, this ARTICLE 9 provides the sole and exclusive remedies of the Parties for any and all Losses arising out of or relating to this Agreement.

(E) Purchaser shall, in addition to any other remedies available at law or in equity, be entitled (i) to withhold payment, when due, of the corresponding amount of any outstanding portions of the Purchase Price until such time as any claim in respect of Losses arising under Section 9.01(a) by an Indemnified Party is fully and finally resolved, and, (ii) if any Purchaser Indemnified Party is entitled to be indemnified for Losses as a result of such claim being fully and finally resolved between the Parties, to set-off the amount of any such claim(s) against any outstanding portions of the Purchase Price.

(F) Notwithstanding anything to the contrary, Purchaser's right to indemnification, reimbursement, or other remedy based upon the express representations, warranties, covenants, and obligations of Seller, including in this ARTICLE 9, shall not be affected or deemed waived by reason of any investigation conducted (or not conducted), or any knowledge acquired (or capable of being acquired), by or on behalf of Purchaser, including any investigations conducted (or not conducted) or knowledge acquired by any of Purchaser's Representatives, at any time, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant, or obligation of Seller. Seller hereby acknowledges that, regardless of any investigation conducted (or not

conducted) by or on behalf of Purchaser, and regardless of the results of any such investigation, Purchaser has entered into this Agreement in express reliance upon the representations and warranties of Seller expressly made in this Agreement. Seller further acknowledges that, in connection with this Agreement, Purchaser has furnished, or is furnishing, to Seller good and sufficient consideration in exchange for the representations and warranties made by Seller. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations. Notwithstanding Seller's indemnity obligations hereunder, Seller will not be obligated to indemnify Purchaser for any Loss arising from or solely relating to Purchaser's, Purchaser's Representatives, or the Project Company's actions or inactions related to facts or circumstances arising after the Closing, and not otherwise related to any breach of Seller's obligations hereunder.

(ii) Method of Asserting Claims.

All claims for indemnification by any Indemnified Party under Section (i), Indemnification, will be asserted and resolved as follows:

(A) If any claim or demand in respect of which an Indemnified Party might seek indemnity under Section (i), Indemnification, is asserted against or sought to be collected from such Indemnified Party by a Person other than a Seller or Purchaser or any Affiliate of Seller or of Purchaser (“**Third Party Claim**”), the Indemnified Party shall deliver a Claim Notice with reasonable promptness to the Indemnifying Party. The Indemnifying Party shall notify the Indemnified Party as soon as practicable within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party under (i), Indemnification, and whether the Indemnifying Party desires, at its sole cost and expense, to defend the Indemnified Party against such Third Party Claim.

(i) If the Indemnifying Party notifies the Indemnified Party within the Dispute Period that the Indemnifying Party desires to defend the Indemnified Party with respect to the Third Party Claim pursuant to this Section ARTICLE 9(ii)(A), then the Indemnifying Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party, such Third Party Claim by all appropriate proceedings, which proceedings shall be vigorously and diligently prosecuted by the Indemnifying Party to a final conclusion or shall be settled at the discretion of the Indemnifying Party (but only with the consent of the Indemnified Party, which consent shall not be unreasonably withheld in the case of any settlement that provides as its sole relief the payment of monetary damages as to which the Indemnified Party will be indemnified in full). The Indemnifying Party shall have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof, *provided*, the Indemnified Party may, at the sole cost and expense of the Indemnified Party, at any time prior to the Indemnifying Party's delivery of the notice referred to in the first sentence of Section ARTICLE 9(ii)(A), file any motion, answer, or other pleadings or take any other action that the Indemnified Party reasonably believes to be necessary or appropriate to protect its interests and is not prejudicial to the Indemnifying Party (it being understood and agreed that if an Indemnified Party takes any such action that is prejudicial and causes a final adjudication that is adverse to the Indemnifying Party, the Indemnifying Party shall be relieved of its obligations hereunder with respect to the portion of such Third Party Claim prejudiced by the Indemnified Party's action), and *provided further*, that if requested by the Indemnifying Party, the Indemnified Party shall, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its

counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third Party Claim in question, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates). The Indemnified Party may retain separate counsel to represent it in, but not control, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party, and the Indemnified Party shall bear its own costs and expenses with respect to such separate counsel except as provided in the preceding sentence and except that the Indemnifying Party will pay the costs and expenses of such separate counsel if: (x) in the Indemnified Party's good faith judgment, it is advisable, based on advice of counsel, for the Indemnified Party to be represented by separate counsel because a conflict or potential conflict exists between the Indemnifying Party and the Indemnified Party which makes representation of both parties inappropriate under applicable standards of professional conduct; or (y) the named parties to such Third Party Claim include both the Indemnifying Party and the Indemnified Party and the Indemnified Party determines in good faith, based on advice of counsel, that defenses are available to it that are unavailable to the Indemnifying Party. Notwithstanding the foregoing, the Indemnified Party may retain or take over the control of the defense or settlement of any Third Party Claim the defense of which the Indemnifying Party has elected to control if the Indemnified Party irrevocably waives its right to indemnity under Section (i), Indemnification, with respect to such Third Party Claim.

(ii) If the Indemnifying Party fails to notify the Indemnified Party within the Dispute Period pursuant to Section ARTICLE 9(ii)(A) that the Indemnifying Party desires to defend the Third Party Claim or if the Indemnifying Party gives such notice but fails to prosecute vigorously and diligently or settle the Third Party Claim, then the Indemnified Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third Party Claim by all appropriate proceedings, which proceedings will be vigorously and diligently prosecuted by the Indemnified Party to a final conclusion or will be settled at the discretion of the Indemnified Party (with the consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed). The Indemnified Party will have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof, *provided, however*, that if requested by the Indemnified Party, the Indemnifying Party shall, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnified Party and its counsel in contesting any Third Party Claim which the Indemnified Party is contesting, or, if appropriate and related to the Third Party Claim in question, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnifying Party or any of its Affiliates). Notwithstanding the foregoing provisions of this Section ARTICLE 9(ii)(A)(ii), if the Indemnifying Party has notified the Indemnified Party within the Dispute Period that the Indemnifying Party disputes its liability hereunder to the Indemnified Party with respect to such Third Party Claim and if such dispute is resolved in favor of the Indemnifying Party in the manner provided in Section ARTICLE 9(ii)(A), the Indemnifying Party shall not be required to bear the costs and expenses of the Indemnified Party's defense or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party shall reimburse the Indemnifying Party in full for all reasonable costs and expenses incurred by the Indemnifying Party in connection with such litigation. The Indemnifying Party may retain separate counsel to represent it in, but not control, any defense or settlement controlled by the Indemnified Party, and the Indemnifying Party shall bear its own costs and expenses with respect to such participation.

(iii) If the Indemnifying Party notifies the Indemnified Party that it does not dispute its liability to the Indemnified Party with respect to the Third Party Claim under Section

(i), Indemnification, or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party with respect to such Third Party Claim, the Loss arising from such Third Party Claim shall be conclusively deemed a liability of the Indemnifying Party under Section (i), Indemnification, and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand following the final determination thereof.

(B) If any Indemnified Party should have a claim under Section (i), Indemnification, against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall deliver an Indemnity Notice with reasonable promptness to the Indemnifying Party. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described in such Indemnity Notice or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes the claim described in such Indemnity Notice, the Loss arising from the claim specified in such Indemnity Notice shall be conclusively deemed a liability of the Indemnifying Party under Section (i), Indemnification, and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand following the final determination thereof. If the Indemnifying Party disputes the claim described in the Indemnity Notice, the Indemnified Party may proceed to take any and all actions available to it in law or equity to recover any amounts due to it pursuant to this ARTICLE 9.

ARTICLE 10 MISCELLANEOUS

(i) Notices.

All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by reputable national overnight courier service, or mailed (first class postage prepaid) to the Parties at the following addresses or facsimile numbers, as applicable:

If to Purchaser, to:

[Purchaser]
[Address]
Attn:

With a copy to:
[Address]
Attn:

If to Seller, to:

ATTN: ~~Alexander Stein, Deputy~~ Peter Costello, General Counsel
Build-Ready Program
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, New York 12203-6399

Notices, requests and other communications will be deemed given upon the first to

occur of such item having been: (a) delivered personally to the address provided in this Section (i); (b) delivered by confirmed email to the email address provided in this Section (i); or (c) delivered by mail or by reputable national overnight courier service in the manner described above to the address provided in this Section (i) (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section (i)). Any Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Party.

(ii) Entire Agreement.

This Agreement supersedes all prior discussions and agreements, whether oral or written, among the Parties with respect to the subject matter hereof which shall be without further force or effect on and after the date of this Agreement, and contain the entire agreements among the Parties with respect to the subject matter hereof.

(iii) Expenses.

Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution and closing of this Agreement and the transactions contemplated hereby.

(iv) Public Announcements.

No press or other public announcement, or public statement or comment in response to any inquiry, relating to the transactions contemplated by this Agreement or the terms hereof shall be issued or made by Purchaser or Seller without the approval of the other Party; provided that a press release or other public announcement, regulatory filing, statement or comment made without such joint approval shall not be in violation of this Section if it is made in order for the disclosing Party or any of its Affiliates to comply with Laws or applicable stock exchange rules and in the reasonable judgment of the Party making such release or announcement, based upon advice of counsel, prior review and joint approval, despite reasonable efforts to obtain the same, would prevent dissemination of such release or announcement in a sufficiently timely fashion to comply with such Laws or rules; and provided further that in all instances prompt Notice from one Party to the other shall be given with respect to any such release, announcement, statement or comment, and each Party shall use commercially reasonable efforts, consistent with such Law or applicable rule, to consult with the other Party with respect to the text of such release, announcement, statement or comment. Seller and Purchaser shall inform their Affiliates that may be involved in the transactions contemplated by this Agreement of the requirements set forth in this Section and shall make reasonable efforts to obtain compliance with the provisions of this Section from such Affiliates.

(v) Confidentiality.

(A) For the period commencing on the date hereof and ending on four (4) years from the Effective Date, this Agreement and the terms thereof and all written information that has been clearly marked by the disclosing party as confidential (“**Information**”) furnished (whether before or after the date hereof) by the Representatives of any Party to the

Representatives of any other Party in connection with the transactions contemplated by this Agreement shall not be disclosed in any manner by any receiving Party to any third party without prior written consent of the disclosing Party and shall be used by a receiving Party solely in connection with the purposes of this Agreement.

(B) The term “Information” will not, however, include information that can be shown to have been (i) previously known by a receiving Party, (ii) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of a receiving Party or (iii) later acquired by a receiving Party from another source if such receiving Party is not aware that such source is under an obligation to another Party to keep such documents and information confidential.

(C) Notwithstanding anything contained in this Section (v), the foregoing restrictions will not apply to: (i) use after the Closing by Purchaser, their successors or permitted assigns of Information furnished concerning the Project Company or the Business or Condition of the Project Company; (ii) disclosure by any Party required or compelled by judicial or administrative process (including in connection with obtaining the necessary Governmental Approvals under or in respect of this Agreement and transactions contemplated hereby) or by other requirements or provisions of Law or of any recognized stock exchange; or (iii) disclosure in an Action or Proceeding brought by a Party in pursuit of its rights or in the exercise of its remedies hereunder. With respect to disclosures pursuant to this Sections ARTICLE 10(v)(C)(ii) or (iii), the disclosing Party shall provide prompt notice of such disclosure and furnish reasonable assistance to the other Party to seek a protective order or to otherwise safeguard or limit the disclosure of such Information.

(D) Notwithstanding anything contained in this Section ARTICLE 10(v), a Party may reveal the Information to actual and prospective Lenders, actual and prospective equity investors or transferees of a direct or indirect ownership interest in such Party or a Project Company or the Project, suppliers and potential suppliers of major equipment to the Project, advisers and other third parties as may be necessary for Purchaser and Seller to perform their obligations under this Agreement and any financing documents so long as such Persons: (i) need to know the Information for purposes of evaluating this Agreement and the Project Company or the Business or Condition of such Project Company; (ii) are informed of the confidential nature of the Information; and (iii) are bound by an agreement to maintain the confidentiality of such Information in a manner consistent with the requirements of this or are otherwise obligated to so maintain the confidentiality of such Information under Law or by Order or ethical rules or codes of conduct.

(vi) Waiver.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition and delivered pursuant to Section ARTICLE 10(i), Notices. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

(vii) Amendment.

This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by or on behalf of each Party.

(viii) No Third Party Beneficiary.

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person other than any Person entitled to indemnity under ARTICLE 9, INDEMNIFICATION.

(ix) No Assignment, Change of Control, Binding Effect.

(A) ~~NYSERDA's~~Seller's consent shall not be required for ~~Seller~~Purchaser to either (a) pledge or assign the Project Company, this Agreement, or the accounts, revenues, or proceeds from this Agreement in connection with financing or tax equity arrangements, or (b) assign the Project Company and this Agreement to an affiliate if (1) the then-current Contract Security as defined in the REC Agreement remains in place, and (2) an Interconnection Agreement has been executed for the Project Company. Upon ~~Seller's~~Purchaser's reasonable request, ~~NYSERDA~~Seller shall execute a consent to assignment associated with a financing in a commercially reasonable form acceptable to ~~NYSERDA and Seller~~Purchaser. For purposes of this definition, "control" shall mean ownership or control, directly or indirectly, of at least fifty percent (50%) of the shares having voting rights, or other equivalent rights of the subject entity entitled to vote.

(B) Notwithstanding any provision in this Article 10 to the contrary, ~~Seller~~Purchaser may, upon prior written notice to ~~NYSERDA~~Seller, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity that has at least fifty percent (50%) ownership of the Project Company, (a) with which or into which such ~~Seller~~Purchaser merges or consolidates; (b) which acquires at least fifty percent (50%) of ~~Seller's~~Purchaser's equity interests or actual control of ~~Seller~~Purchaser; or (c) to which ~~Seller~~Purchaser transfers all or substantially all of its assets; in each case provided that such other entity agrees, in an instrument executed by the ~~Seller~~Purchaser and such entity satisfactory in form and substance to ~~NYSERDA~~Seller, to be bound by the terms hereof, including any obligation to deliver Contract Security; and provided further, that such other entity's creditworthiness is comparable to or superior to that of Seller at the time this Agreement was executed. ~~NYSERDA~~Seller reserves the right to ~~request~~make requests of any additional documentation ~~deemed necessary~~ to review any change in control under this Section 10.09.

(C) To facilitate any tax equity investment, financing or refinancing of the Project, each Party further agrees as follows:

(i) Seller shall execute such consents, agreements, or similar documents with respect to a collateral assignment hereof to a Lender as any such Lender may reasonably request in connection with the documentation of such tax equity investment, financing or refinancing of the Project, and

(ii) Seller shall provide a certificate: (A) stating that, to the best of its Knowledge, as of the date of such certificate, no event of default, or event that with the passage of time, the giving of notice or both, would become a breach of this Agreement by Seller has occurred;

or (B) if any such breach has occurred, stating the nature thereof.

(iii) Purchaser shall reimburse Seller for any reasonable, documented expenses incurred by Seller in connection with Section ARTICLE 10(ix)(C)(ii) and ARTICLE 10(ix)(C)(iii).

(D) [Intentionally Omitted].

(x) Invalid Provisions.

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby: (a) such provision shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

(xi) Governing Law.

This Agreement shall be governed by and construed in accordance with the Laws of the state of New York without regard to its principles of conflict of laws, except Section 5-1401 of the New York General Obligations Law.

(xii) Venue and Consent to Jurisdiction.

Each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the state of New York located in the Borough of Manhattan, New York, New York or the courts of the United States of America for the Southern District of New York having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby: (a) accepts the non-exclusive jurisdiction of the aforesaid courts; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents; (c) irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of any Action or Proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such Action or Proceeding brought in any such court has been brought in any inconvenient forum; (d) agrees that service of process in any such Action or Proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address in Section ARTICLE 10(i), Notices, or at such other address of which the other Parties shall have been notified; and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Law or limit the right to bring any Action or Proceeding in any other jurisdiction.

(xiii) Attorney's Fees.

In the event of any Action or Proceeding between any of the Parties with respect to any of the transactions contemplated hereby or subject matter hereof, the prevailing Party shall, in

addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees, costs (including at the trial and appellate levels and in any bankruptcy proceeding) and all expenses of investigation and litigation.

(xiv) Waiver of Consequential Damages.

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT AS PROVIDED WITH RESPECT TO: (A) ANY TAXES WHICH MAY BE INDEMNIFIED UNDER ARTICLE 9, INDEMNIFICATION; OR (B) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED WITH RESPECT TO THIRD PARTY CLAIMS THAT ARE PART OF A LOSS WHICH MAY BE INDEMNIFIED UNDER SECTION 11, IN NO EVENT SHALL ANY PARTY OR ITS AFFILIATES, OR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE HEREUNDER AT ANY TIME FOR PUNITIVE, CONSEQUENTIAL, SPECIAL, OR INDIRECT LOSS OR DAMAGE OF ANY OTHER PARTY OR ANY OF SUCH PARTY'S AFFILIATES, INCLUDING LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF DEDUCTIONS AND CREDITS (INCLUDING THE INVESTMENT TAX CREDIT ALLOWABLE PURSUANT TO SECTIONS 38(B)(1), 46 AND 48(A) OF THE CODE) OR ANY OTHER SPECIAL OR INCIDENTAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND EACH PARTY HEREBY EXPRESSLY RELEASES THE OTHER PARTIES, THEIR AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND REPRESENTATIVES THEREFROM.

(xv) Waiver of Trial By Jury.

EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

(xvi) Anti-Corruption Laws.

Without limitation to any other provision contained in this Agreement or in any related agreement, each Party represents, warrants and covenants to the other Party on the date hereof, and as of the Closing Date, that:

(a) Such Party is familiar with all Laws of the United States of America that are applicable to the Parties' relationship including, without limitation, the Foreign Corrupt Practices Act, as amended (the "FCPA"), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the regulations of the US Department of Treasury, Office of Foreign Assets Control and similar laws (collectively, the "Anti-Corruption Laws"). Specifically, each Party acknowledges that it shall be unlawful for any Party, and/or any officer, director, employee or

agent of a Party, to make any kind of offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to either:

(i) any foreign official (or foreign political party) for purposes of either influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or securing any improper advantage, or inducing such foreign official to use his influence with a foreign government, or instrumentality thereof, to affect or influence any act or decision of such government or instrumentality in order to assist such Person in obtaining or retaining business for or with, or directing business to any Person; or

(ii) any Person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official (or foreign political party), or to any candidate for foreign political office, for any of the prohibited purposes described in this Section 10.16.

(b) Each Party further acknowledges that “foreign official” means any officer or employee of a foreign government or any department, agency or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization, including employees of government-owned companies. The Parties shall comply in all respects with the Anti-Corruption Laws.

(xvii) ~~Facsimile~~ Facsimile Signature, Counterparts.

This Agreement may be executed by facsimile signature in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(Signatures on next page)

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by a duly authorized officer of each Party as the dates written below.

SELLER:

**NEW YORK STATE ENERGY RESEARCH AND
DEVELOPMENT AUTHORITY**

By: _____

Name:

Title:

Date: _____

[PURCHASER],

By: _____

Name:

Title:

Date: _____

Exhibit A
Form of Assignment Agreement

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST

THIS ASSIGNMENT AND ASSUMPTION (the “Assignment”) is made and entered into as of _____, 2023 (“Effective Date”), by and between [Seller], a (“Assignor”), [Purchaser] (“Assignee”).

RECITALS:

WHEREAS, Assignee and Assignor entered into a *Membership Interest Purchase Agreement*, dated as of _____, 2018 (the “Agreement”), pursuant to which, among other things, Assignor has agreed to transfer to Assignee all of its membership interest (the “Interest”) in [__ProjectCo__], LLC, a Delaware limited liability company (the “Company”); and

WHEREAS, as of the Effective Date, Assignee desires to be admitted as the sole member of the Company and to become the only party to the Limited Liability Agreement of the Company dated as of _____ (the “LLC Agreement”); and

WHEREAS, to effect the sale and purchase of the Interests, Assignor and Assignee are executing and delivering this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns and transfers all of its right, title and interest in and to the Interest to Assignee, free and clear of any pledges, assignments (other than the assignment to which reference is made herein), hypothecations, security interests, liens, encumbrances, restrictions or other claims whatsoever and Assignee hereby accepts the same from Assignor as of the Effective Date. Assignor intends to transfer and assign all of its rights and benefits as the sole member of the Company, subject to all of the obligations and burdens with respect to the Interest from and after the Effective Date.
2. Assignee hereby accepts the assignment and transfer of the Interest and agrees to become a party to and to be bound by the terms and conditions of the LLC Agreement to the same extent as if it were an original party thereto. Pursuant to Section [____] of the LLC Agreement, Assignee has become the sole member of the Company by virtue of this Assignment immediately prior to the assignment of the Interest effected hereby and Assignor shall hereby cease to be the sole member of the Company. On the Effective Date of this Assignment, the Assignee shall be the sole member of the Company and the only party to the LLC Agreement.
3. Assignor hereby agrees to execute and deliver to Assignee such other documents, instruments or agreements as may be reasonably requested by Assignee to further effectuate the assignment and transfer of the Interest as herein provided.

4. Notwithstanding anything contained herein to the contrary, nothing contained in this Assignment shall relieve or be deemed to relieve Assignor from its obligations relating to the Interest prior to the Effective Date.
5. This Assignment will be construed in accordance with, and be governed by, the laws of the State of New York.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment to be duly executed as of the date first above written.

ASSIGNOR:

**NEW YORK STATE ENERGY RESEARCH
AND DEVELOPMENT AUTHORITY**

By: _____

Name:

Title:

Date: _____

ASSIGNEE:

[[PURCHASER]]

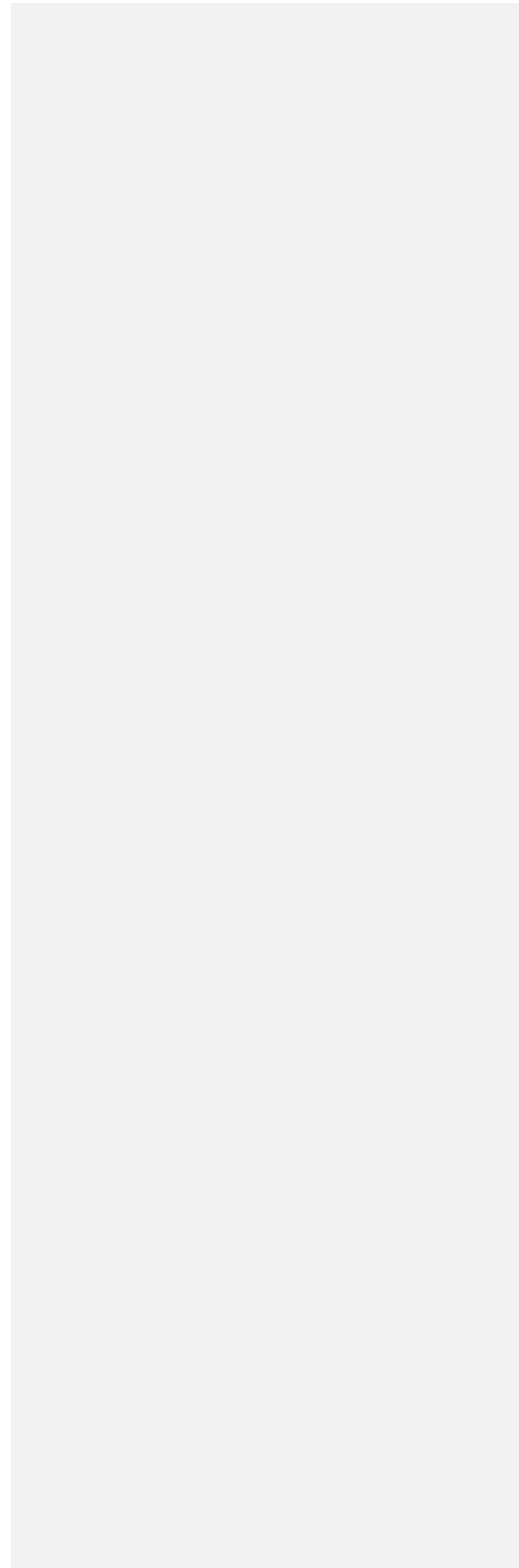
By: _____

Name:

Title:

Date: _____

Exhibit B
Form of Host Community Benefit Agreement



APRIL 2024 DRAFT - BRRFP23-1 MIPA

Exhibit C
Form of Pilot Agreement

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Exhibit D-1
Form of Seller's Certificate

The undersigned, a duly authorized Officer of the New York State Energy Research and Development Authority (“Seller”), pursuant to Section ARTICLE 5(i) of the *Membership Interest Purchase Agreement*, dated as of [DATE] (“Agreement”), between [Seller]. (the “Seller”) and [Purchaser] a [State] limited liability company (“Purchaser”), does hereby certify as set forth below. All capitalized terms not defined herein have the meanings attributed to them in the Agreement.

The undersigned HEREBY CERTIFIES on behalf of Seller for the benefit of Purchaser that:

1. Each representation and warranty in ARTICLE 3 of the Agreement that is qualified as to materiality is true and correct, and those not so qualified are true and correct in all material respects, as of the Closing Date, except, in each case, to the extent that such representations and warranties refer specifically to an earlier date, in which case such representations and warranties that are qualified as to materiality shall have been true and correct, and those not so qualified shall have been true and correct in all material respects, as of such earlier date; and

IN WITNESS WHEREOF, the undersigned has duly executed this Officer's Certificate on behalf of Seller as of the date indicated below.

**New York State Energy Research and
Development Authority**

By: _____

Name:

Title:

Date: _____

Exhibit D-2
Form of Secretary's Certificate

SECRETARY'S CERTIFICATE

The undersigned, _____, Secretary of _____, a
[[State] limited liability company] (the "Company"), hereby certifies that:

1. Attached hereto as Attachment A is a true and correct copy of the Certificate of Formation of the Company, as amended to the date hereof;

2. Attached hereto as Attachment B is a true and correct copy of the Limited Liability Company Agreement of the Company, as in effect on the date hereof; and

3. The Company has been duly formed and is in good standing under the laws of the State of Delaware. Attached hereto as Attachment C is a true and correct copy of a Certificate of Good Standing of the Company, dated _____, 2018, certified by the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, I have hereunto signed my name on this ____ day of _____, 2022.

By: _____

Secretary

ATTACHMENT A
CERTIFICATE OF FORMATION

[SEE ATTACHED]

ATTACHMENT B
LIMITED LIABILITY COMPANY AGREEMENT

[SEE ATTACHED]

ATTACHMENT C

CERTIFICATE OF GOOD STANDING

[SEE ATTACHED]

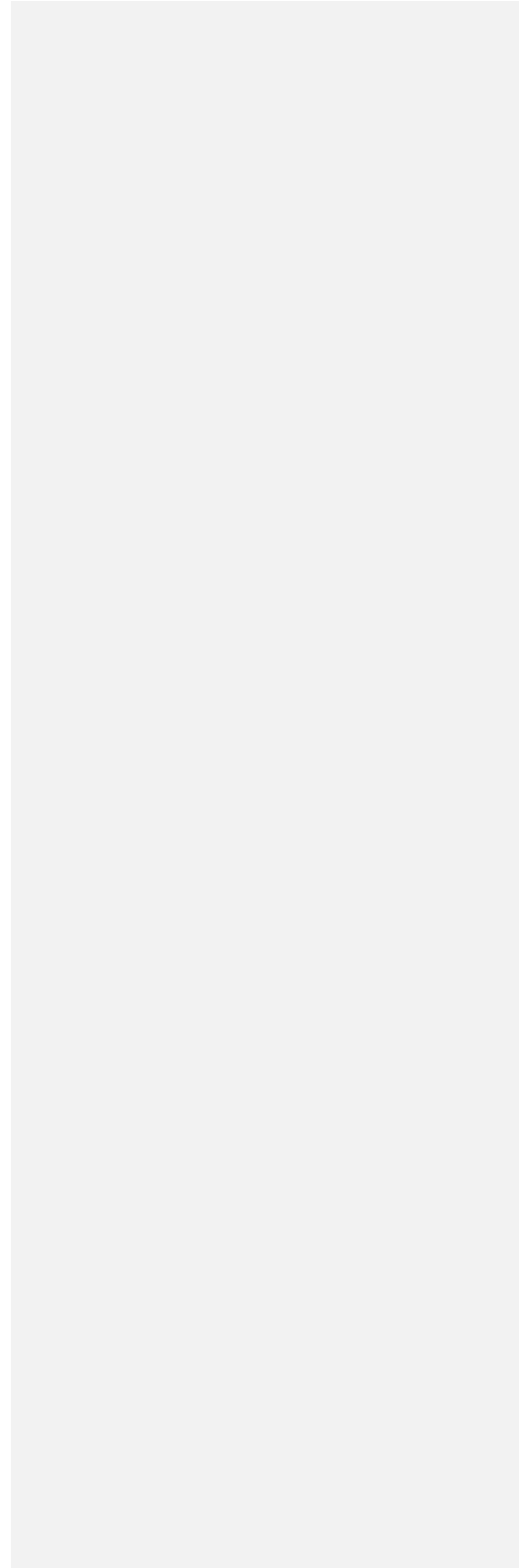


Exhibit E
Form of Purchaser's Certificate

The undersigned, a duly authorized Officer of [Purchaser], a [State] limited liability company ("Purchaser"), pursuant to Section 9.03 of the *Membership Interest Purchase Agreement*, dated as of [DATE] (the "Agreement"), between [Seller] ("Seller"), and Purchaser, does hereby certify as set forth below. All capitalized terms not defined herein have the meanings attributed to them in the Agreement.

The undersigned HEREBY CERTIFIES on behalf of Purchaser for the benefit of Seller that:

1. Each representation and warranty in ARTICLE 4 of the Agreement that is qualified as to materiality is true and correct, and those not so qualified are true and correct in all material respects, as of the Closing Date after giving effect to any supplement thereto, except, in each case, to the extent that such representations and warranties refer specifically to an earlier date, in which case such representations and warranties that are qualified as to materiality shall have been true and correct, and those not so qualified shall have been true and correct in all material respects, as of such earlier date; and

IN WITNESS WHEREOF, the undersigned has duly executed this Officer's Certificate on behalf of Purchaser as of the date indicated below.

[[PURCHASER]]

By: _____

Name:

Title:

Date: _____

Exhibit F
Form of Officer Resignation

NOTICE OF RESIGNATION

To Whom It May Concern:

Simultaneously with Closing (as defined in that certain *Membership Interest Purchase Agreement*, dated _____, 2018, by and between _____ and _____), the undersigned hereby resigns as a _____ of _____.

Dated: _____, 2018

(OFFICER NAME)

Schedule 1
Seller's Knowledge

Seller's Knowledge:

NYSERDA Build-Ready, Director
NYSERDA Build-Ready, Program Manager
NYSERDA Build-Ready, Project Manager
NYSERDA Build-Ready, Program Counsel

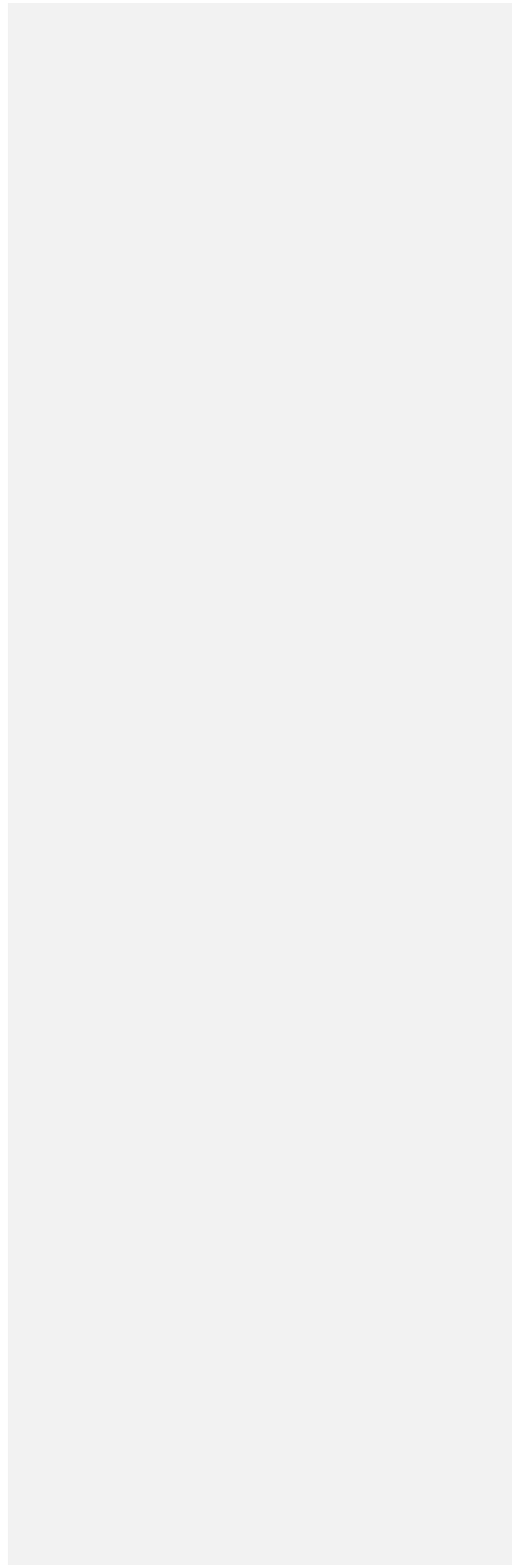
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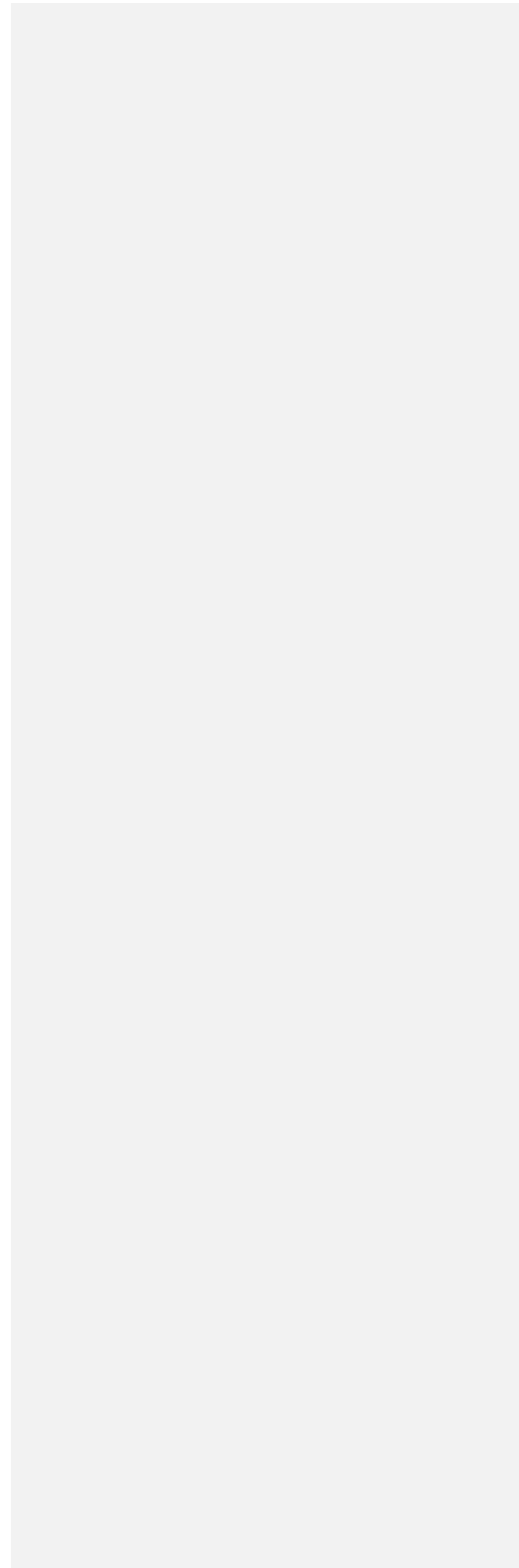
Schedule ARTICLE 2(v)
Liabilities

None



Schedule ARTICLE 3(v)
Consents and Approvals; No Violations

None



**Schedule ARTICLE 3(vi)
Governmental Approvals and Filings**

Approvals Obtained:
[To be filled in by Seller]

Licenses:
[To be filled in by Seller]

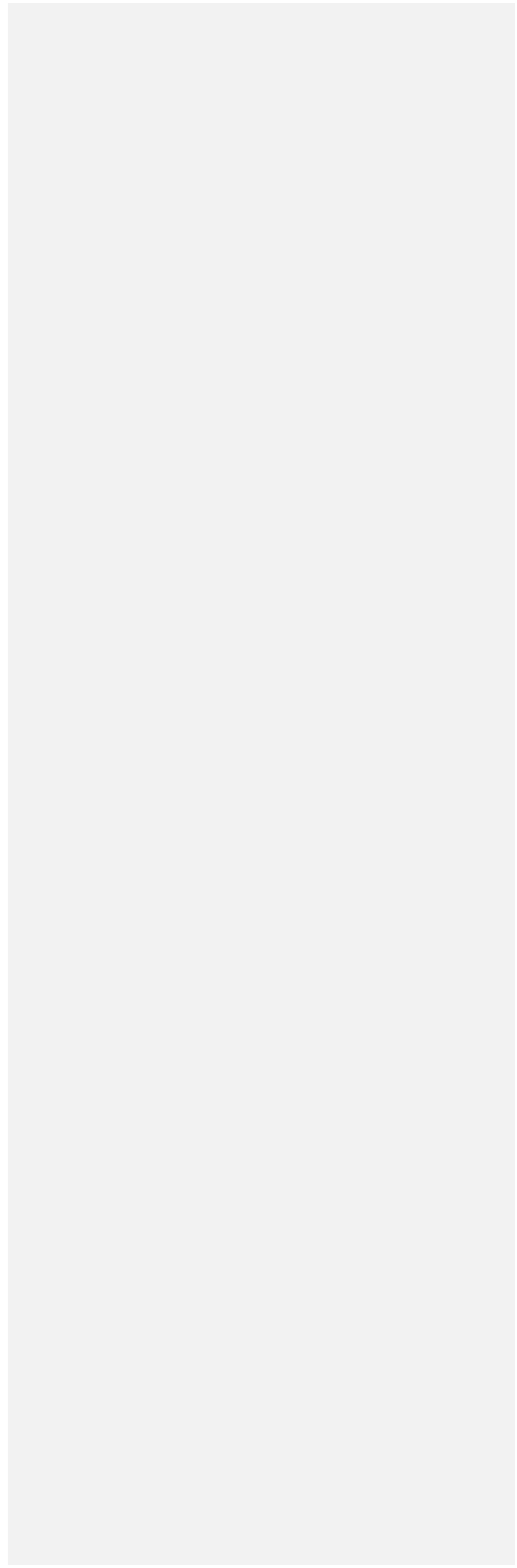
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1. [Federal Aviation Administration, Notice Criteria Tool, Determination of No Hazard to Air Navigation \(March 15, 2023\).](#)
2. [United States Department of the Interior, Fish and Wildlife Service, Endangered Species Act \(ESA\) Section 7 – Federal Threatened and Endangered Species Consultation \(Jan. 13, 2023; recommended to be verified after 90 days\).](#)
3. [United States Department of the Army, Buffalo District, Corps of Engineers, Approved Jurisdictional Determination and Delineation Verification for Department of the Army Processing No. LRB-2022-00226 \(Sept. 7, 2022, valid for five years\).](#)
4. [New York State Adirondack Park Agency, In the Matter of the Application of BR Project 1, LLC; Benson Mines, Inc.; and St. Lawrence County, Permittees, for a permit pursuant to § 809 of the Adirondack Park Agency Act, APA Permit 2022-0046 \(Sept. 21, 2022, and recorded in the St. Lawrence County Clerk’s Office as Instrument No. R-2022-00014508, Oct. 13, 2022\).](#)
5. [New York State Adirondack Park Agency, Subdivision by Lease, BR Benson Mines Solar, Clifton, NY, P2022-0046 \(July 26, 2022\).](#)
6. [New York State Department of Environmental Conservation, Division of Environmental Permits, Region 6, SEQR coordination request response \(June 9, 2021, and recommended to update if proposed project is still under development within one year\).](#)
7. [New York State Department of Environmental Conservation, Division of Fish and Wildlife, New York Natural Heritage Program, Report of rare or state-listed animals and plants and significant natural communities from New York Natural Heritage Program database \(July 20, 2021\) \(CONFIDENTIAL\).](#)
8. [New York State Office of Parks, Recreation, and Historic Preservation, Review of historic/cultural resources under the New York State Historic Preservation Act of 1980, BR Benson Mines Solar Project/20 MW/179 of 255 Acres, New York State Route 3, Towns of Clifton and Fine, St. Lawrence County, NY, 21PR03849 \(letter of no impact\) \(June 14, 2021\).](#)
9. [Town of Clifton, New York, Site Plan Approval \(Nov. 3, 2022\).](#)
10. [The St. Lawrence County Planning Board, Notice of Staff Action on Project Referral Pursuant to Memorandum of Understanding, Notification of County Planning Board’s review of project \(Nov. 14, 2022\).](#)
11. [Town of Clifton, St. Lawrence County, Resolution #10-2023, PILOT Consent Resolution, BR Project 1 LLC Project \(November 8, 2023\).](#)
12. [St. Lawrence County Industrial Development Agency, Resolution No. IDA-23-12-43, Approving Resolution, BR Project 1, LLC Project Number 4001-23-07, \(December 20, 2023\).](#)
13. [St. Lawrence County IDA Approval Letter, BR Project 1 LLC/BR Benson Mines Solar Project, \(Received January 5, 2024\).](#)
14. [Clifton-Fine School district, PILOT Consent Certificate, \(November 13, 2023\).](#)
15. [Clifton-Fine School District, PILOT Consent Resolution, BR Project I LLC Project, \(November 13, 2023\).](#)
5. [Clifton Fine Solar Community Improvement Fund Agreement \(January 12, 2024\).](#)

Approvals Sought, Not Yet Received:

1. [New York State Depart of Transportation, Permit 32 – Highway Work Permit Application for Utility Work \(Submitted October 9, 2023; DOT Response Letter was provided November 30, 2023\).](#)
2. [New York State Depart of Transportation, Permit 33 – Commercial Access Highway Work Permit \(Phase 1 Submitted November 11, 2021; DOT Phase I Response Letter was provided January 19, 2022, Final Phase 2 Submitted November 3, 2022\).](#)

3. New York State Independent System Operator, Q1166 Facilities Study Agreement (Application Submitted September 27, 2023).



Schedule ARTICLE 3(ix)
Schedule of Costs and Commitments; Absence of Certain Events

~~{To be filled in by Seller}~~

1. Lease Option Agreement, by and between Benson Mines, Inc. and New York State Energy Research and Development Authority, entered into as of April 6, 2021 and amended and restated as of August 30, 2023 (with Lease Option Extension Notices dated as of Feb. 28, 2022 and Feb. 28, 2023).

a. Option Payment:

- Second Extension Period following the Effective Date (to April 5, 2026): \$33,245.00
- Third Extension Period following the Effective Date (to April 5, 2027): \$40,559
- Optionee shall pay to Owner the respective Extension Payment for each Extension Period within thirty days of Optionee's notice to Owner of its exercise of any of the three Extension Periods.

b. Lease Payment:

- Lessee will pay Owner, commencing on or before the first day of the month following the commencement of the Effective Date, and for the duration of the Entire Term, the sum of one thousand dollars (\$1,000) per annum for each acre or partial acre included in the Premises with a 2% annual escalator as set forth in Exhibit A of the Lease Option Agreement.

2. New York Department of Transportation:

- a. PERM 33 Fee Estimates: Minor Commercial Permit \$550
- b. PERM 32 Fee Estimates: \$64 for 100 feet of fiber, \$63 for driveway culvert replacement
- c. PERM 44 Surety Bond: \$15,000
- d. PERM 50 Inspection Payment Agreement: Payment for construction inspection charges, based on the number of workdays involved.

3. New York Independent System Operator:

- a. System Impact Study, remaining costs to be determined by NYISO
- b. Facilities Study, remaining costs to be determined by NYISO
- c. Expedited Deliverability Study, study not yet initiated, costs to be determined by NYISO
- d. Interconnection Agreement, Agreement not initiated, costs to be determined by NYISO

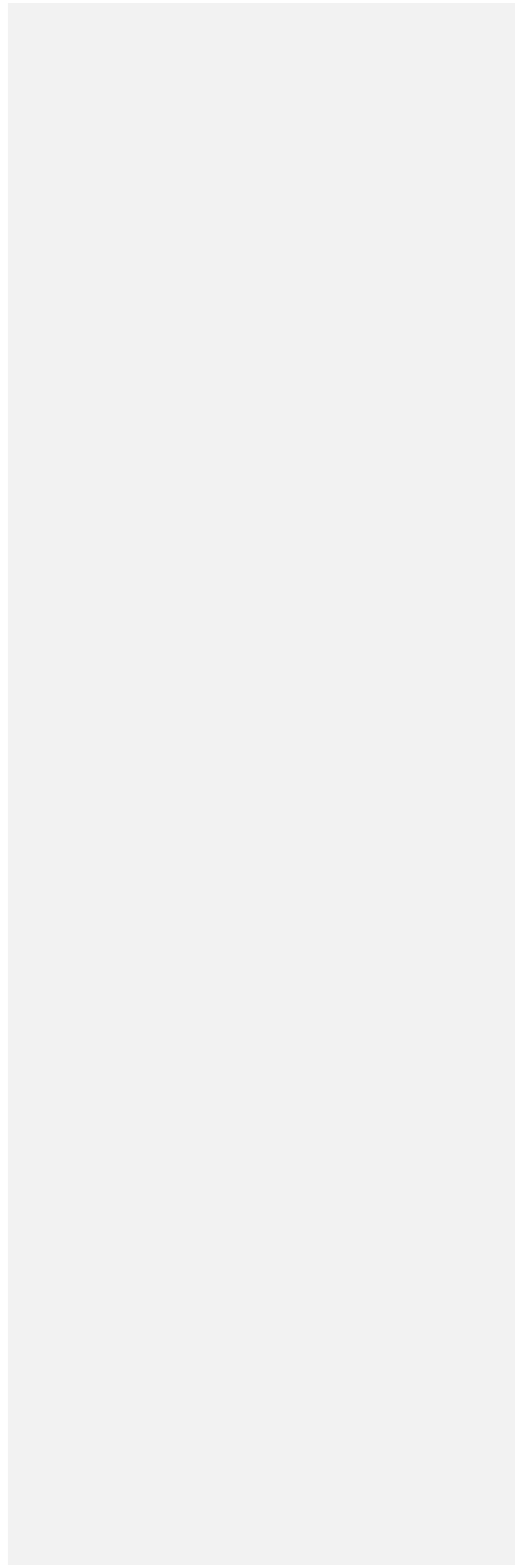
4. St. Lawrence County Industrial Development Agency (IDA) Payment in Lieu of Taxes (PILOT) Agreement:

- a. PILOT Payments of \$5,000 per MW for 20 years with a 2% annual escalator for years 2-20 to Town, County, and School District
- b. SLCIDA Closing Fee: 1 % of the Project cost, to be paid upon execution of the PILOT Agreement
- c. SLCIDA Legal Fees: \$20,000, to be paid upon execution of the PILOT Agreement

5. Clifton Fine Solar Community Improvement Fund: upon execution of the PILOT Agreement, deposit \$200,000 into the Clifton Fine Solar Community Improvement Fund (the "Fund"). The Fund will be administered by SLCIDA, to be disbursed by SLCIDA from

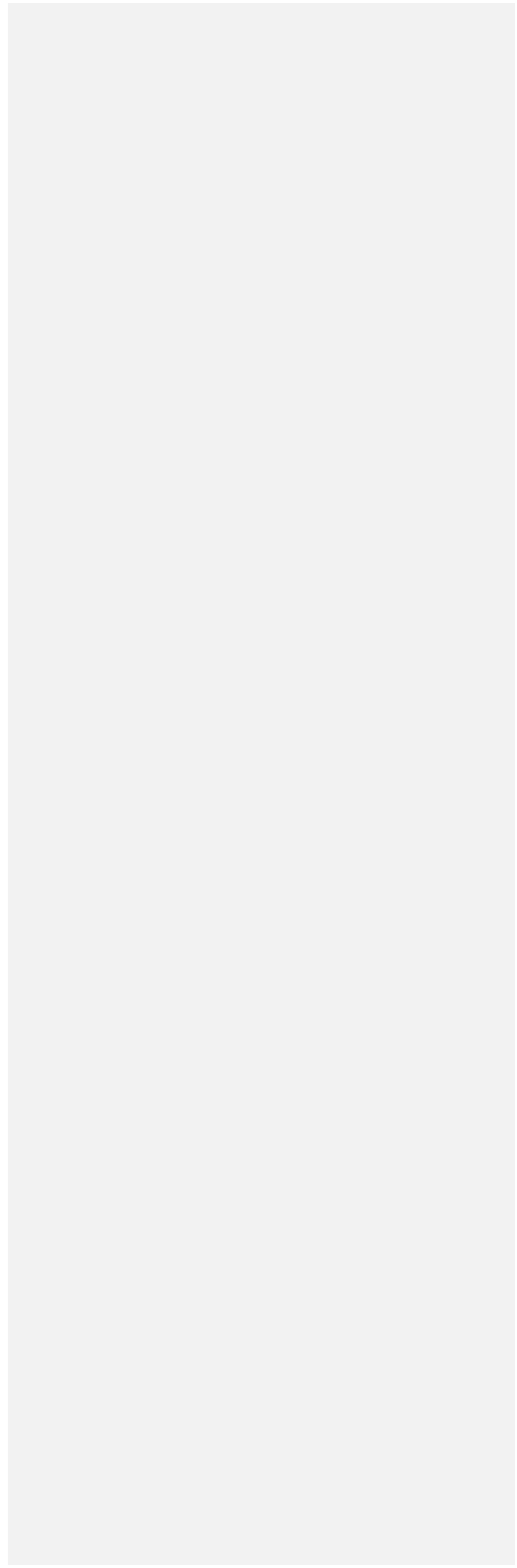
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time to time to advance economic development within the geographic boundaries of the Clifton-Fine Central School District.



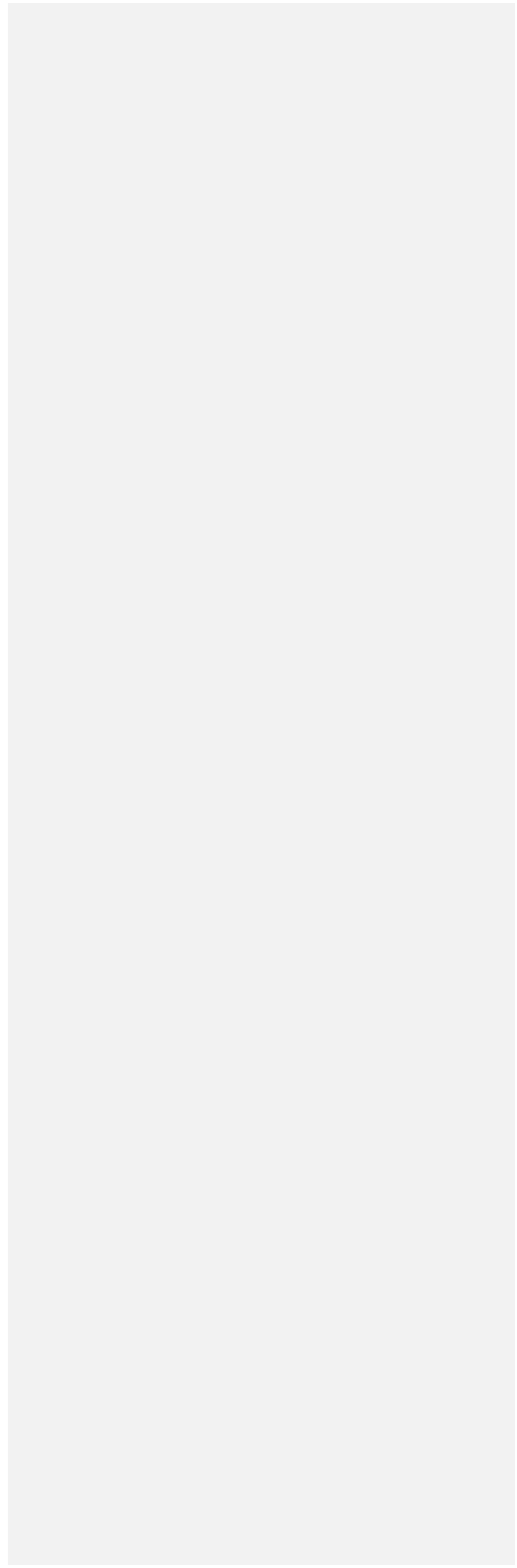
Schedule ARTICLE 3(x)
Condition of Project

None.



Schedule 3.12 Taxes

None.



Schedule ARTICLE 3(xiii)
Legal Proceedings

None.

Schedule 3.15
Real Property

~~[To be filled in by Seller]~~

1. Real Property Descriptions and Surveys:

<u>Parcel:</u>	<u>Legal Description:</u>
214.000-4-21.1	Tax parcels 214.-4-21.1 and 214.-4-24 are described in a deed from the Benson Iron Ore Trust to Benson Mines, Inc., dated July 9, 1980, and recorded July 24, 1980 in the St. Lawrence County Clerk's Office in Liber 951 at Page 1086.
214.000-4-24	

2. ALTA Survey Files:

- [2021-027-S1-42X30.pdf](#)
- [2021-027-S2-42X30.pdf](#)
- [2021-027-S3-42X30.pdf](#)
- [2021-027-S4-42X30.pdf](#)
- [2021-027-S5-42X30.pdf](#)
- [2021-027-S6-42X30.pdf](#)

3. Topographic and Boundary Survey:

- [20210818 NAM Survey.pdf](#)

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Schedule ARTICLE 3(xvi)

Contracts

~~{To be filled in by Seller}~~

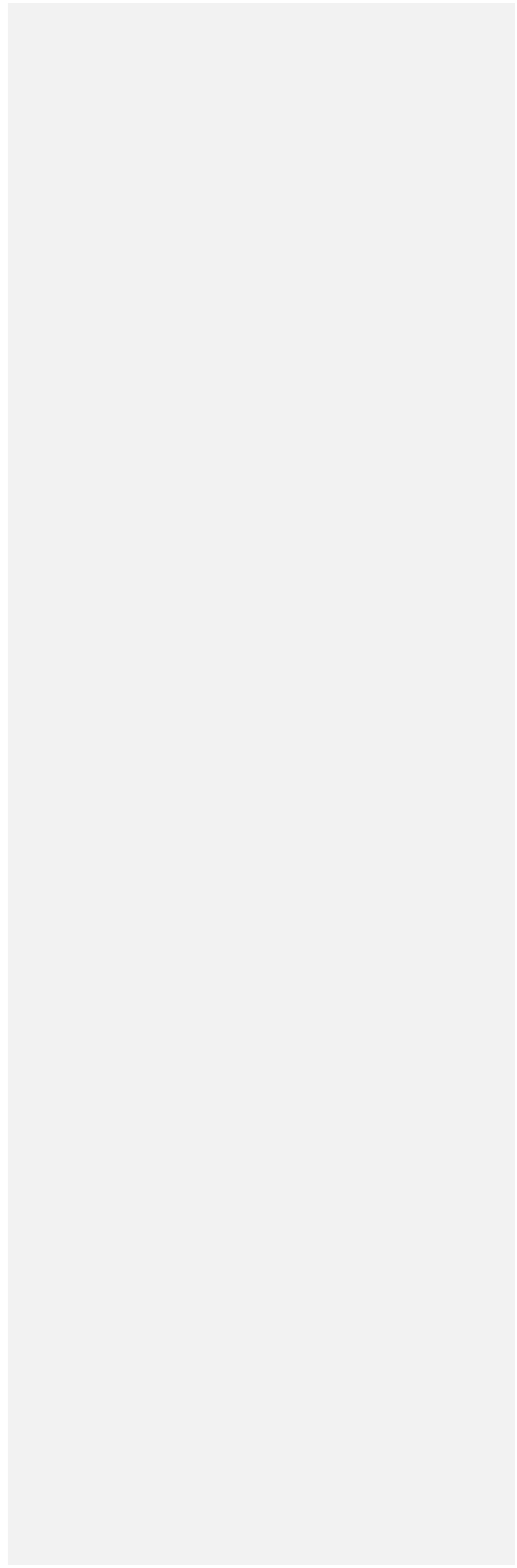
1. Operating Agreement of BR Project 1 LLC, by and between BR Project 1 LLC and the New York State Energy Research and Development Authority, a New York public benefit corporation, as the sole member of the Company, effective as of Jan. 6, 2022.
2. Lease Option Agreement, by and between Benson Mines, Inc. and New York State Energy Research and Development Authority, entered into as of April 6, 2021 and amended and restated as of August 30, 2023 (with Lease Option Extension Notices dated as of Feb. 28, 2022 and Feb. 28, 2023).
3. Memorandum of Lease Option Agreement, by and between Benson Mines, Inc. and New York State Energy Research and Development Authority, recorded by the St. Lawrence County Clerk, as Instrument # R-2021-00005893, on May 10, 2021.
4. Memorandum of Lease Option Agreement, by and between Benson Mines, Inc. and New York State Energy Research and Development Authority, recorded by the St. Lawrence County Clerk, as Instrument # R-2022-00007121, on May 27, 2022.
5. Memorandum of Lease Option Agreement, by and between Benson Mines, Inc. and New York State Energy Research and Development Authority, recorded by the St. Lawrence County Clerk, as Instrument # R-2023-00003938, on April 4, 2023.
6. Memorandum of Lease Option Agreement, by and between Benson Mines, Inc. and New York State Energy Research and Development Authority, recorded by the St. Lawrence County Clerk, as Instrument # R-2023-00013638, on October 31, 2023.
7. All items disclosed in Schedule B of Commitment for Title Insurance, Stewart Title, Title Number 71150395, 2nd Amended (March 30, 2023).

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Schedule ARTICLE 3(xvii)
Personal Property

None.



Schedule ARTICLE 3(xviii)
Intellectual Property

None.

Schedule ARTICLE 3(xix)
Assets

See Schedules 3.05 (Consents and Approvals), 3.06 (Governmental Approvals and Filings), 3.15 (Real Property), 3.16 (Contracts), 3.17 (Personal Property), 3.18 (Intellectual Property), 3.20 (Resource Data), 3.21 (Studies and Reports).

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Schedule ARTICLE 3(xx)
Resource Data

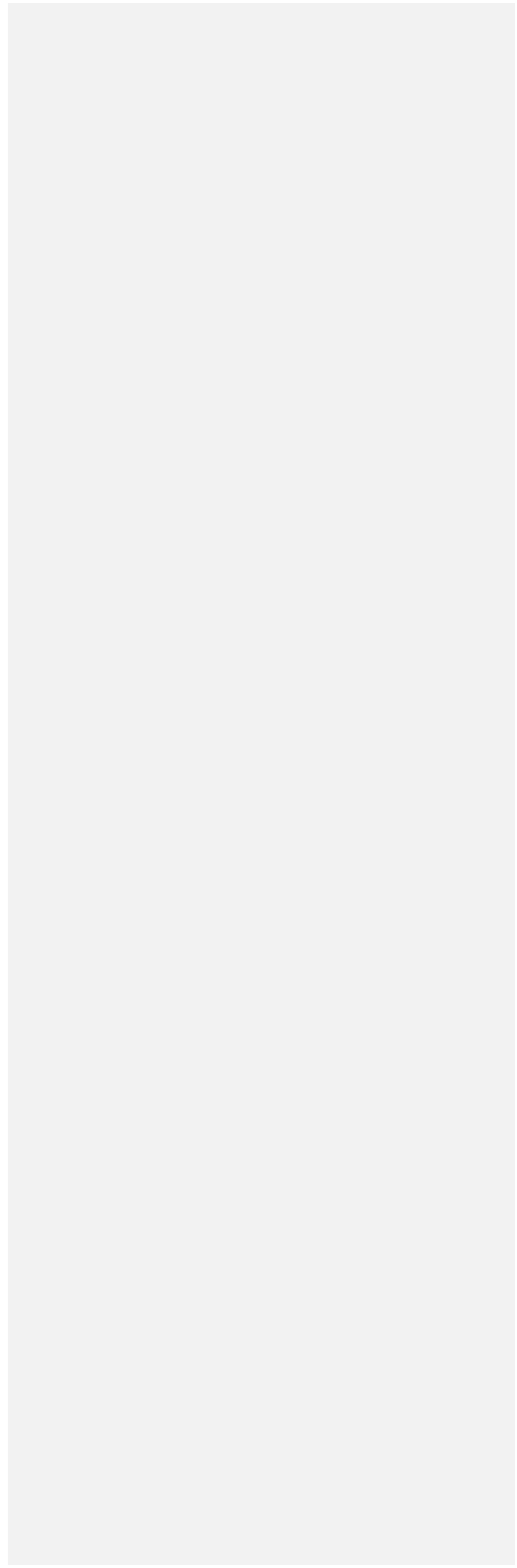
~~[To be filled in by Seller]~~

1. [PVsyst – Simulation Report, Grid-Connect System, Project: 416114 NYSERDA Benson Mines, Variant 16.52MWdc \(12MWac\), and P50 Energy Estimate, by TRC Engineers, LLC \(June 9, 2023\).](#)
2. [PVsyst – Simulation Report, Grid-Connect System, Project: 416114 NYSERDA Benson Mines, Variant 26.45MWdc, and P50 Energy Estimate, by TRC Engineers, LLC \(June 12, 2022\).](#)

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Schedule ARTICLE 3(xxi)
Studies and Reports

~~{To be filled in by Seller}~~



1. [Commitment for Title Insurance, Stewart Title, Title Number 71150395, 2nd Amended \(March 30, 2023\).](#)
2. [Study Area Map, Benson Mine, Town of Clifton, by TRC Engineers, LLC \(Feb. 2021\).](#)
3. [Array Plan, BR Benson Mines Solar Project, Preliminary Not for Construction, by TRC Engineers, LLC \(May 30, 2023\).](#)
4. [Overall Site Layout, BR Benson Mines Solar Project, Preliminary Not for Construction, by TRC Engineers, LLC \(July 2021\).](#)
5. [ALTA/NSPS Land Title Survey, Prepare for N.Y.S. Energy Research & Development Authority, Job No. 2021-027, by Corner Post Land Surveying, PLLC \(July 26, 2021\).](#)
6. [Topographic and Boundary Survey, Prepare for N.Y.S. Energy Research & Development Authority, Job No. 2021-027, by Corner Post Land Surveying, PLLC \(July 26, 2021\).](#)
7. [Geotechnical Engineering Report, Proposed Benson Mines Solar Array, by TRC Engineers, LLC \(August 24, 2021\).](#)
8. [Benson Mines Solar Project: Test Pits and Infiltration Testing, TRC Engineers, LLC Project # 444154.0GEI, by TRC Engineers, LLC \(September 23-24, 2021\).](#)
9. [Phase I Environmental Site Assessment, BR Benson Mines Solar Project State Route 3 and County Road 60, Town of Clifton, New York, by TRC Engineers, LLC \(January 10, 2024\).](#)
10. [Wetland and Stream Delineation Report, BR Benson Mines Solar Project, by TRC Engineers, LLC \(October 2021\).](#)
11. [Wetland and Stream Delineation DWG files, by TRC Engineers, LLC \(August 2021\).](#)
12. [Decommissioning Plan, 20.0MW Ground-Mounted Solar Array, by TRC Engineers, LLC \(January 31, 2022\).](#)
13. [Confidential Memorandum Re: July 26-27, 2021 Plant Survey—*Pyrola asarifolia*, Pink Shinleaf Benson Mines, Town of Clifton, St. Lawrence Co., NY, by TRC Companies \(August 2021\).](#)
14. [Noise Analysis, BR Benson Mines Solar Project, by TRC Environmental Corporation \(February 2022\).](#)
15. [Visual Impact Assessment, BR Benson Mines 20 MW Solar Project, by TRC Companies \(February 2022\).](#)
16. [Technical Memorandum BR Benson Mines Glare Study – Solar Glare Hazard Analysis, by TRC Companies \(November 2021\).](#)
17. [NYSERDA BR Benson Mines Solar Landscape Development Plan, Prepared for: Adirondack Park Agency Solar Generation Facility Permit, by TRC Engineers, LLC \(July 2022\).](#)
18. [PVsyst – Simulation Report, Grid-Connect System, Project: 416114 NYSERDA Benson Mines, Variant 16.52MWdc \(12MWac\), and P50 Energy Estimate, by TRC Engineers, LLC \(June 9, 2023\).](#)
19. [PVsyst – Simulation Report, Grid-Connect System, Project: 416114 NYSERDA Benson Mines, Variant 26.45MWdc, and P50 Energy Estimate, by TRC Engineers, LLC \(June 12, 2022\).](#)
20. [BR Benson Mines Solar Project Issued for Permit Set \(Preliminary, Not for Construction\), by TRC Engineers, LLC \(July 2021\) \(General Notes and Legend, Overall Site Layout, Existing Hydrology Plan, Proposed Hydrology Plan, Existing Conditions and Site Removals Plan, Site Plan, Grading and Drainage Details, Driveway and Road Details, Civil and Fencing Details, Array and Racking Details, Hydrology Details, Erosion and Sedimentation Control Details, Trench Boring and Crossing Details, Cable Termination Enclosure Details, Recloser Detail, Standard NYSDOT Details, Collection One Line Diagram, Electric On-Line Diagram, Landscaping Plan\).](#)
21. [BR Benson Mines Solar Project Issued for Permit Set, 20 MW Layout DWG Files, by TRC Engineers, LLC.](#)
22. [Updated Site Layout Per DOT PERM 33 and PERM 32 comment requests, BR Benson Mines Solar Project, Preliminary Not for Construction, by TRC Engineers, LLC \(December 2023\).](#)

23. [Stormwater Pollution Prevention Plan \(SWPPP\), BR Benson Mines Solar Project, in Compliance with the New York State Department of Environmental Conservation General Permit GP-0-20-001 for Stormwater Discharges from Construction Activities, by TRC Engineers, LLC \(Dec. 2021, rev. Jan. 2022, rev. July 2022\).](#)
24. [BR Benson Mines Solar 20MW HydroCAD Files, by TRC Engineers, LLC.](#)
25. [BR Benson Mines 12 MW CAD Files, by TRC Engineers, LLC.](#)
26. [NYISO Pre-Application Report, for Jeremy Wyble, NYSERDA as Interconnection Customer, re Star Lake Station 727 as Proposed POI.](#)
27. [Small Generator Interconnection Request \(Application Form\), for NYSERDA as Interconnection Customer, for BR Benson Mines Solar, 20 MW AC solar project connecting to the local 34.5 kV system, signed by John Amandolare \(NYSERDA\), \(May 3, 2021\).](#)
28. [Q1166 System Impact Study \(SIS\) including Q1166 Draft SIS Reports, Q1166 Modification, including a Modification Report, an independent modification study report and modeling data to support the request to NYISO for a project modification from 20 MW to 12.125 MW Nameplate, and Q1166 Final SIS Report and Appendix.](#)
30. [Q1166 Facilities Study including the Facilities Study application submitted September 27, 2023.](#)
31. [NYISO Curtailment and Congestion Analysis Benson Mines Solar, by PowerGEM, LLC \(January 8, 2024\).](#)
32. [Benson Mines Feasibility Study Report, by PowerGEM, LLC \(January 8, 2024\).](#)
33. [Phase II Environmental Site Assessment, BR Benson Mines Solar Project State Route 3 and Country Road 60, Town of Clifton, New York, by TRC Engineers, LLC \(January 10, 2024\).](#)
34. [Project Evaluation and Cost/Benefit Analysis, BR Project 1, LLC, Project #4001-23-07, St. Lawrence County Industrial Development Agency.](#)

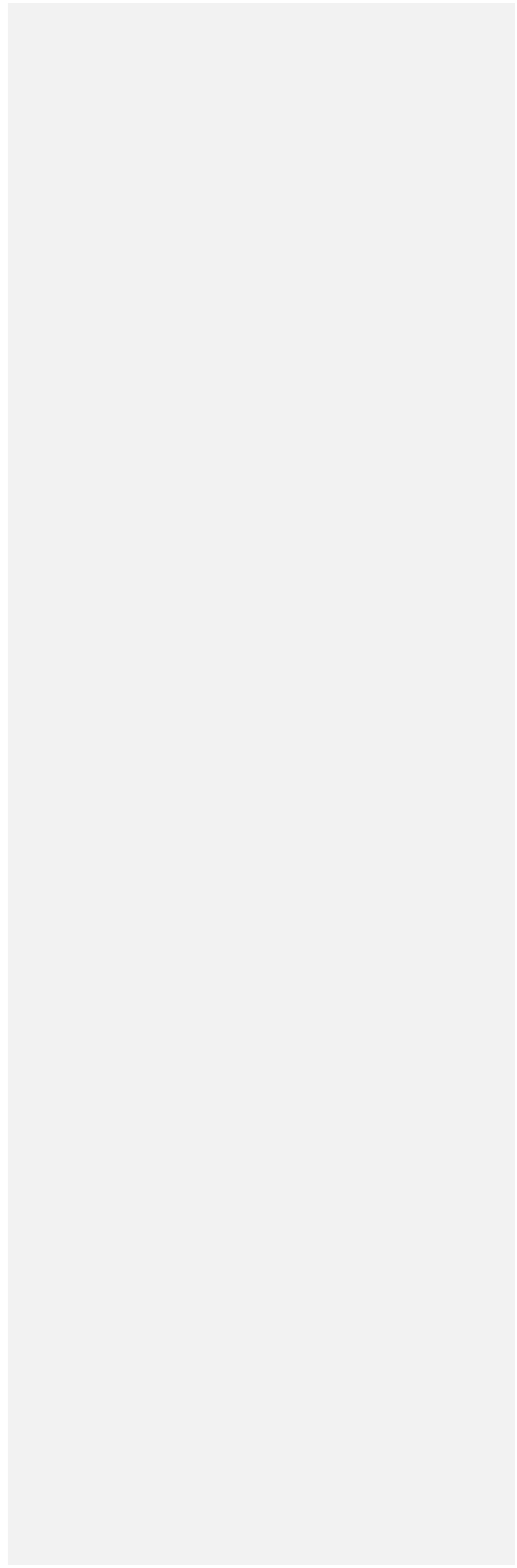
Schedule ARTICLE 3(xxii)
Environmental Matters

~~[To be filled in by Seller]~~

1. Phase I Environmental Site Assessment, BR Benson Mines Solar Project State Route 3 and County Road 60, Town of Clifton, New York, by TRC Engineers, LLC (January 10, 2024). The Phase I ESA will expire 180 days from the date it was published. It will be the responsibility of the Project Company to refresh the Phase I ESA. The Phase I user is NYSERDA and not the Project Company. Please see the attached electronic copy of the Phase I Environmental Site Assessment for the details on the environmental conditions at the site.
2. Phase II Environmental Site Assessment, BR Benson Mines Solar Project State Route 3 and Country Road 60, Town of Clifton, New York, by TRC Engineers, LLC (January 10, 2024). Please see the attached electronic copy of the Phase II Environmental Site Assessment for the details on the environmental conditions at the site.
3. US Department of Interior, US Fish and Wildlife Service, New York Ecological Services Field Office, List of Threatened and Endangered Species, letter dated January 13, 2023. The US Fish and Wildlife Service (Service) recommends that the accuracy of the species list should be verified after 90 days. It is recommended that the Project Company refresh and verify the accuracy of the species list.
4. New York State Department of Environmental Conservation, Division of Environmental Permits, Region 6, BR Benson Mines Solar Project State Environmental Quality Review (SEQR) Coordination, letter dated June 9, 2021. It is recommended that the Project Company contact the NYS DEC Region 6 Office to update the response with the most current information.
5. Wetland and Stream Delineation Report, BR Benson Mines Solar Project, by TRC Engineers, LLC (October 2021).
6. Wetland and Stream Delineation DWG files, by TRC Engineers, LLC (August 2021).
7. Confidential Memorandum Re: July 26-27, 2021 Plant Survey—*Pyrola asarifolia*, Pink Shinleaf Benson Mines, Town of Clifton, St. Lawrence Co., NY, by TRC Companies (August 2021).
8. CDM Smith, Final Site Investigation Report: Former Jones & Laughlin Site 18-Acre Parcels Environmental Restoration Program (ERP) Site No. E645029J&L Steel Site Investigation Report (January 2013).
9. New York State Department of Environmental Conservation, Division of Fish and Wildlife, New York Natural Heritage Program, Report of rare or state-listed animals and plants and significant natural communities from New York Natural Heritage Program database (July 20, 2021) (CONFIDENTIAL).

Schedule ARTICLE 3(xxiii)
Liabilities and Permitted Liens

See Schedules 3.09 and 3.16.



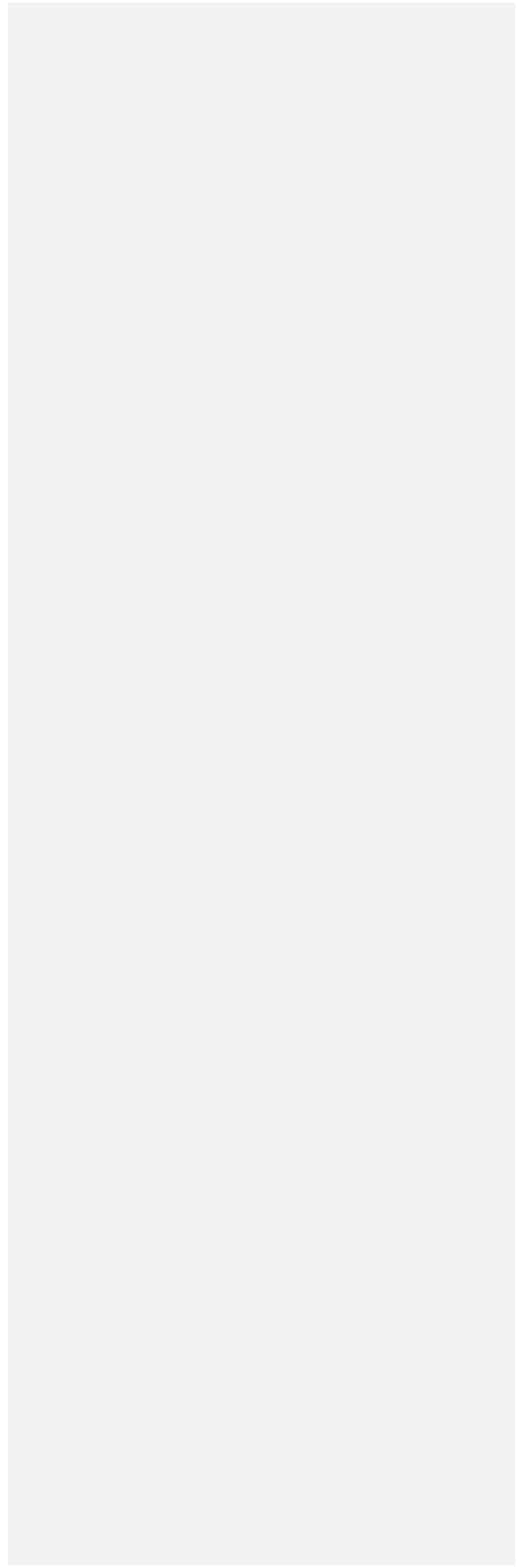
Schedule ARTICLE 3(xxiv)
Insurance

None.

~~{To be filled in by Seller}~~

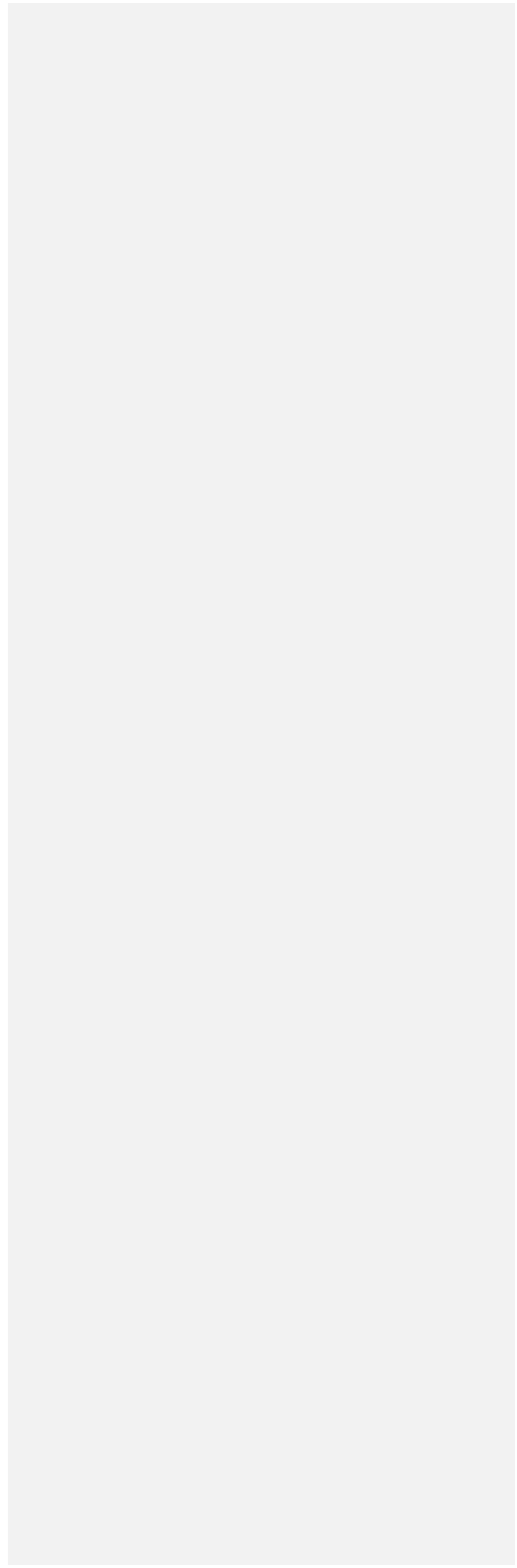
Schedule ARTICLE 3(xxvii)
Affiliate Transactions

None.



Schedule ARTICLE 4(iii)
No Conflicts

~~None~~



Schedule ARTICLE 4(iv)
Governmental Approvals and Filings

~~{To be filled in by Seller}~~