

POWER PURCHASE AGREEMENT
(CUSTOMER GRID SUPPLY)

THIS POWER PURCHASE AGREEMENT is made this ____ day of _____, 2020, by ENERGY STORAGE HAWAII LLC and/or Designee, whose mailing address is 1103 Prospect Street, Honolulu, Hawaii 96822, (the "Producer"), and the ASSOCIATION OF APARTMENT OWNERS OF THE COLLECTION, whose mailing address is 600 Ala Moana Boulevard, Honolulu, Hawaii 96813 (the "Customer");

R E C I T A L S :

WHEREAS, Customer is the owner of certain real property located at 600 Ala Moana Boulevard, Honolulu, Hawaii 96813 (the "Property"), and desires to make a portion of such Premises available to Producer for the construction, operation and maintenance of a solar powered electric generation project (the "System"), and to purchase from Producer the electric energy produced by the project ("Energy");

WHEREAS, Producer desires to sell, and Customer desires to purchase Energy from the System pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, in order to perform the terms of this Agreement, Customer desires to grant a license to use the upper parking decks spaces, electrical conduit and wire run to electric equipment room, and other necessary areas of the Premises to Producer.

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

1. DEFINITIONS

1.1 Commercial Operation Date means the first day electrical energy (hereinafter "Energy") is delivered from the System to Customer **as approved by the Electric Utility.**

1.2 Electric Utility means any person, including HECO, authorized by the State of Hawaii to provide electric energy and related services to retail users of electricity in the area in which the Premises is located.

1.3 Fair Market Value means the price that would be paid in an arm's length, free market transaction, in cash, between and informed, willing seller and an informed, willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the System, and advances in solar

technology, provided that the installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

1.4 Force Majeure Event means, to the extent not caused by the act or omission of the party affected thereby, and which is beyond the reasonable control of such party, and which cannot be avoided or overcome by the exercise of commercially reasonable embargoes, strikes, lockouts, epidemics, fires, natural phenomena, such as **VOG**, earthquakes, storms, hurricanes, tsunamis, and strikes or labor disputes. A Force Majeure Event shall not include equipment failures, or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event and events caused by the gross negligence or willful misconduct of the party claiming the Force Majeure Event.

1.5 Hazardous Substances means any petroleum or petroleum products, explosives, radioactive materials, asbestos in any form, urea formaldehyde foam insulation and polychlorinated biphenyls, to the extent regulated under any Environmental Law.

1.6 HECO means Hawaiian Electric Company, Inc.

1.7 Interconnection Agreement means the standard agreement(s), between Customer and the Electric Utility providing for the interconnection of the System with the Electric Utility's grid.

1.8 Termination Value means an amount equal to the sum of: (i) the costs of dismantling, packing, removing and transporting to storage the System, (ii) any tax credits or rebates that are recaptured by federal or state tax authorities, (iii) the Fair Market Value of the System, (iv) any loan prepayment fee payable by Producer, and (v) an early termination fee equal to ten percent (10%) of items (i) through (iii) herein, if such early termination is due to a Customer's default or at Customer's request.

2. INSTALLATION; TESTING; AND FINANCING

2.1 Installation.

(a) Producer will at its sole cost and expense, design, install and construct the System on the Premises. Customer shall give Producer access to additional areas of the Premises that the Producer deems reasonably necessary to inspect, store, install and construct the System from the date of this Agreement to the Commercial Operation Date.

Producer shall pay Customer for any damage caused by Producer to Customer's facilities on the Premises.

(b) Producer shall use licensed contractors to perform the work of installing, operating and maintaining the System. Producer shall be responsible for the conduct of any contractor or its subcontractors in connection with the work on the System. Producer shall ensure all contractors maintain insurance applicable to the contractor's activities that satisfy the requirements of Section 8.1 (a).

(c) Producer shall give Customer regular updates, on a reasonable schedule requested by Customer, on the progress of installation of the System and shall notify Customer of when Producer will commence testing of the System. Customer shall have the right to have its representatives present during the testing process, but subject to reasonable written rules and procedures as may be established by Producer and its contractor. After Producer has determined, in its reasonable judgment, that the System meets the requirements of the Electric Utility, has been installed in accordance with all applicable laws, and is capable of producing electricity on a continuous basis, Producer shall notify Customer that installation of the System is complete and shall specify the Commercial Operation Date for the System, which may be immediately upon delivery of such notice to Customer.

(d) Producer shall design, obtain permits, install, operate and maintain the System so as to keep it in good condition and repair, in compliance with all applicable laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at the Producer's sole cost and expense. Except for emergency situations or unplanned outages, Producer shall cause the work to be performed between the hours of 7:00 a.m. and 7:00 p.m., Monday through Sunday, in a manner that minimizes interference with Customer, and Customer's employees, visitors, tenants and licensees and their customers to the extent commercially practical. Producer shall, and shall cause its contractors to keep the Premises reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Customer for conduct of business on the Premises.

2.3 Approvals. Producer shall pay for and obtain all necessary government authorization and/or permits for the installation and operation of the System prior to commencing the installation work and Customer shall fully cooperate with Producer to obtain said authorizations and permits.

2.4 Electric Utility Approvals. Producer shall pay for and obtain the Electric Utility's approval to connect the System to the Electric Utility's grid, and Customer shall fully cooperate with Producer to obtain the Electric Utilities' approval to connect the System to the Electric Utility's grid. If the Electric Utility (i) fails to approve the interconnection of the System to its grid on a timely basis, (ii) requires Producer to undertake a line capacity study, and/or (iii) requires payment of an interconnection or line study fee; then in any such event, Producer may, in its sole discretion, terminate this Agreement, and in the event of such termination, neither party shall be liable to the other party under this Agreement.

2.5 Commercial Operation Date. After testing the System, Producer shall commence the commercial operation of the System, and shall give Customer written notice of the Commercial Operation Date, which is the date when all of the following have occurred: (i) Producer certifies to Customer that the System is operational, (ii) Producer has obtained all government authorization required in connection with the System, and (iii) Customer has entered into an Interconnection Agreement with the Electric Utility.

2.6 Ownership of the System; Benefits; and Restrictions on Customer's Access.

(a) Producer shall be the legal and beneficial owner of the System, and shall be entitled to any and all tax and/or renewable energy benefits available in connection with the System (collectively, "Benefits"), including without limitations, all tax rebates, tax credits, grants, depreciation, carbon credits, and/or renewable energy credits available under federal or state law. Producer shall have the right, without the prior consent of Customer, to assign any of the foregoing benefits to anyone, including without limitations, Producer's lender.

(b) Customer shall not interfere with, tamper, seek to operate or otherwise handle any portion or all of the System, and shall not allow any third party to operate or tamper with the System, except that trained and authorized personnel of Customer may have access to the System in emergency situations.

2.7 Financing of the Project.

(a) If Producer elects to obtain financing for the System, it shall obtain such financing within sixty (60) days after the date of this Agreement. If Producer is unable to obtain such financing by such deadline then Producer shall have the right to

terminate this Agreement, and in the event of such termination, neither party shall be liable to the other party under this Agreement.

(b) Producer may, without Customer's prior written consent: (i) grant a security interest in, mortgage and/or otherwise encumber the System, and (ii) transfer or assign its rights, including the right to receive the Energy Price, under this Agreement as collateral security for amounts payable under any security agreement, loan documents or other financing arrangement, provided that:

(i) All of Customer's rights under this Agreement shall not be superseded or prohibited by any contradictory provision in any mortgage, security instrument, or loan documents; and

(ii) In the event of any default by Producer under any loan documents, mortgage, security instrument, such lender shall give notice thereof to Customer, and Customer shall have the right to cure such default and exercise its rights against Producer on account of such default.

2.8 Independent Contractor. Producer, and any of its employees, agents and subcontractors, shall undertake its performance hereunder as an independent contractor and not as officers, employees or agents of Customer.

2.9 No Public Utility. The parties do not intend that either Producer or the System shall be considered a "public utility," as defined by Hawaii law.

3. TERM: CUSTOMER OPTIONS; TERMINATION

3.1 Term. The term of this Agreement shall be for a period of twenty (20) years commencing on the Commercial Operation Date, and expiring twenty (20) years hence, unless sooner terminated, as herein set forth.

3.2 Options.

(a) Option to Extend the Term. Each party shall have the option to extend the term of this Agreement for one (1) additional five (5) year period, provided that such party is not in default of this Agreement. Each party shall exercise such option at least one-hundred eighty (180) days prior to the expiration of the Term. If either party exercises its respective option to extend, then the terms and condition of this Agreement

shall continue in full force and effect during the extension term, except as to the availability of this option.

(b) Customer's Option to Purchase the System. Provided that Customer is not in default, Customer shall have the option to purchase the System upon written notice to Producer at any time following the sixtieth (60) month of the Commercial Operation Date. The purchase price shall be the then Fair Market Value of the System.

Producer's debt structure has two loans based upon the tax basis of the system. Loan 1 will be in the amount of 25% and will be fully paid off in the 24-30 months period. Loan 2 will be in the amount of 50%. Until loan 1 is paid off, interest only payments will be made. Once loan 1 is paid off, principal and interest payments will be made. By the 60 month, approximately 45% of this loan will remain owed.

In the event Customer exercises its option to purchase the System at Fair Market Value, Producer agrees to sell the System to Customer and at Customer's option, (i) cash payment of Fair Market Value less the remaining loan balance upon conditions (A) Customer is able to assume the loan and (B) the personal guaranty(ies) under the loan is released or (ii) under an agreement of sale over a five (5) year term with monthly payments of principal and interest, but no down payment. The interest rate under such agreement of sale shall be the interest rate then applicable to the loan which Producer is subject to.

Upon exercising the option to purchase, title to the System shall pass to Customer "as-is, where-is;" but free and clear of all liens and encumbrances caused or placed on the System by Producer, except as to the loan. If Customer desires to exercise this option, it shall no later than ninety (90) days prior to the applicable anniversary date notify Producer of its election to exercise the option, and on or before ninety (90) days after such anniversary date shall pay the purchase price to Producer and/or execute relevant agreement of sale documents.

In the event that the parties fail to reach an agreement as to the fair market value of the System, then the dispute shall be determined by final and binding arbitration in accordance with the rules of Dispute Prevention & Resolution, Inc., except that each party shall submit their own appraisal for the Fair Market Value of the System to a single arbitrator who shall have jurisdiction solely limited to selecting one of the appraisals in its entirety as the prevailing determination of the Fair Market Value of the System and the losing party shall pay for all fees and costs of the arbitration and of both appraisals. There shall be no discovery and only a single arbitrator hearing to allow the presentation of the appraisals by each party's appraiser. The arbitrator must agree to render a decision in thirty (30) days in order to qualify to be the arbitrator and the parties shall cooperate in

completing the arbitration in such thirty (30) days subject to arbitrator imposed sanctions for any failure to do so.

3.3 Payment of Termination Value Prior to the Expiration of the Term. If Customer terminates this Agreement prior to the expiration of the term, for any reason other than Producer's default hereunder, then Customer shall be required to pay to Producer the Termination Value as liquidated damages. Producer shall transfer all of its ownership rights in and to the System to Customer upon payment in full of the Termination Value. Notwithstanding anything contained herein to the contrary, Customer shall not be required to pay Producer the Termination Value if Customer exercises its right to purchase the system pursuant to section 3.2(b) above.

3.4 Producer Termination. Producer shall have the right to terminate this Agreement upon written notice to Customer:

- (a) at any time prior to commencement of installation of the System;
- (b) if a governmental authority issues an order, that causes the sale of Energy from the System to Customer to be subject to federal or State regulation;
- (c) if Producer is unable to obtain necessary financing, or approvals thereto;
- (d) if Customer fails to make repairs or upgrades to the Premises, including the roof and its structural components, that Producer deems necessary prior to installation of the System; or
- (e) at any time after the Commercial Operation Date if Customer is in default of any of the terms and conditions of this Agreement; in which event, Customer shall pay to Producer the Termination Value as defined herein.

3.5 Customer Termination. Customer shall have the right to terminate this Agreement upon notice to Producer:

- (a) if the Commercial Operation Date does not occur on or before December, 31, 2014, or such other date mutually agreed upon, by the parties in writing, or

(b) at any time after the Commercial Operation Date, if Producer is in default of any of the terms and conditions of this Agreement, and Producer fails to cure such default within thirty (30) days after notice of such default is given by Customer to Producer.

In the event of any such termination, Producer shall immediately remove the System as herein provided.

3.6 Removal of the System.

(a) Embedded Items. The roof attachments involve embedding bolts and a low base for roof struts (about 2”) into the concrete with epoxy. To remove these bolts and low roof strut bases will risk breaking the waterproofing barrier and concrete. It is not practical to remove the bolts and low roof strut bases, and therefore, Customer agrees these items should be left embedded in the roof upon expiration or termination of the Term.

(b) Removal. Producer shall, at Customer’s sole cost and expense, remove the System from the Premises within sixty (60) days after the expiration of the Term, and return the Premises to its original condition, ordinary wear and tear excepted, and provided that the embedded items shall remain embedded in the roof, as set forth hereinabove.

4. SYSTEM SIZE; PURCHASE; ENERGY PRICE

4.1 Size and Purchase of Energy. Customer acknowledges and agrees that the size of the System shall be between 20-45 kilowatts (kW). Customer shall purchase all of the Energy produced by the System during the Term, up to Customer’s Energy requirements. Producer shall provide electrical and structural engineering plans to Customer setting forth the plans and specifications of the System. Producer shall have the right, at its sole cost and expense, and at its sole discretion, to install additional panels to increase the size of the System.

4.2 Energy Price. Customer shall pay to Producer a monthly payment calculated by multiplying the monthly production of the Energy produced by the System for that month, times a fixed kilowatt per hour (kWh) rate of 16 cents per kWh.

At the 65th month after the Commercial Operation Date, the energy price shall increase to 20 cents a kWh for the remainder of this agreement.

4.3 Taxes. Customer shall pay all State general excise taxes, and any similar taxes on gross income payable on account of the payments made to Producer hereunder, at the current rate of 4.712% (collectively, "GET Taxes"). Customer shall also pay all real property taxes, excises, assessments or charges of any kind, if any, which are assessed, levied, charged, or imposed by any public authority on account of the Producer's System being located on the Premises.

4.4 Billing and Payment. For each and every calendar month during the Term, Customer shall pay to Producer on or before the fifth day of the month, the Energy Price plus GET Taxes for the preceding month.

4.5 Late Payments. All payments hereunder shall be made without set-off or deduction. Any payment not made within ten (10) days when due shall bear interest at a rate of one percent (1%) per month from the date on which such payment was required to have been made through and including the date such payment is actually received by the Producer.

4.6 Security Deposit. Customer, contemporaneously with the execution of this Agreement shall deposit with Producer the sum of ZERO. All funds so deposited shall be held by Producer, without liability for interest, as security for the faithful performance by Customer of all of the terms, covenants, and conditions of this Agreement by said Customer to be kept and performed during the term hereof. If at any time during the term of this Agreement any of the Energy Price payments herein reserved shall be overdue and unpaid, or any other sum payable by Customer to Producer hereunder shall be overdue and unpaid, then Producer, may at the option of Producer (but Producer shall not be required to) appropriate and apply any portion of said deposit to the payment of any such overdue rent or other sum. In the event of the failure of Customer to keep and perform any of the terms, covenants and conditions of this Agreement to be kept and performed by Customer, then at the option of Producer said Producer may appropriate and apply said entire deposit, or so much thereof as may be necessary, to compensate Producer for all loss or damage sustained or suffered by Producer due to such breach on the part of Customer. Should the entire deposit, or any portion thereof, be appropriated, and applied by Producer for the payment of unpaid Energy Price payment or other sums due and payable to Producer by Customer hereunder, then Customer shall, upon the written demand of Producer, forthwith remit to Producer a sufficient amount in cash to restore said security to the amount required to be deposited with Producer as provided for hereinabove, and Customer's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Agreement. Should Customer comply with all of said terms, covenants and conditions and promptly pay all of the rental herein provided

for as it falls due, and all other sums payable by Customer to Producer hereunder, the said deposit shall be returned in full to Customer at the end of the original term or extended term of this Agreement, as the case may be, or upon the earlier termination of this Agreement.

5. SALE OF ENERGY

5.1 Sale of Energy to Third Parties. Customer shall not have the right to sell Energy from the System to any third party including the Electric Utility without the prior written consent of the Producer, which consent may be withheld in Producer's sole discretion.

6. OPERATION, MAINTENANCE, AND INTERCONNECTION

6.1 Operation and Maintenance Work. Producer, at its sole cost and expense, shall provide the following operation, repair, monitoring and maintenance services to the System during the Term: (a) cleaning of the photovoltaic modules on an as needed basis; (b) testing panels and/or strings; (c) inspecting all System components; (d) troubleshooting on an as needed basis; and (e) monitoring System performance. Producer shall not be responsible for maintenance of the Premises and/or the roof of the Premises.

6.2 Malfunctions and Emergencies.

(a) Customer and Producer shall notify the other as soon as possible following the discovery of (i) any material malfunction in the System or (ii) an interruption in the supply of Solar Services.

(b) Producer shall commence repairs as soon as reasonably possible after notice or upon its own discovery of any malfunction.

(c) Producer shall be responsible for repairing any damage to the Premises arising from the malfunction of the System.

(d) Notwithstanding anything to the contrary in this Agreement, if an emergency condition arises in or affecting the Premises, Customer shall have the right to de-energize the System in order to perform necessary repairs to the System, or otherwise

remedy such emergency condition. Customer shall, as soon as practicable, notify Producer of such emergency and the actions that Customer has taken that affect the System.

6.3 Metering.

(a) Maintenance and Testing. Producer shall install and maintain on the Premises a meter to measure the amount of Energy produced by the System (the “Meter”). Producer shall have the right to access the Meter at any time.

(b) Customer Audits and Inspections. Customer shall have a right to access and inspect the Meter at any time. Customer shall have the right to audit the Meter data once a year; provided however, any such audit shall be at Customer's sole cost and expense.

(c) Adjustments. If Producer discovers that the Meter is in error by more than two percent (2%), then Producer shall promptly repair or replace the Meter. Producer shall make a corresponding adjustment to the amount of Energy produced by the System based on such test results for either (i) the actual period of time when Meter readings were inaccurate, or (ii) if such period cannot be determined, then a period equal to the date of the last previous test confirming accurate metering to the date the Meter is repaired or replaced.

6.4 Outages. Delivery of Energy from the System may be temporarily interrupted under the following conditions (excluding Force Majeure Events):

(a) By the Electric Utility. If the interruption in the delivery of Energy is caused by the Electric Utility, neither party shall be in default hereunder with respect to any obligation of that party. Each party shall not be liable to the other party for any loss of revenue or other costs incurred or sustained by such party as a result of outage caused by the Electric Utility.

(b) By Producer. Producer may temporarily interrupt or reduce delivery of Energy from the System to Customer when necessary to maintain, repair, or inspect the System, during which period Producer shall not be obligated to deliver, and Customer shall not be obligated to pay for Energy not delivered.

(c) By Customer. Customer may shut down, or otherwise disconnect the System as Customer deems necessary solely to maintain, repair, replace, remove or inspect the Premises if a malfunction or emergency situation arises involving the

Premises or the System; provided, however, that Customer shall, except in emergency situations, notify Producer in writing at least forty-eight (48) hours in advance of the commencement of such Customer Outage. Customer shall minimize the occurrence and duration of any such curtailment, interruption or reduction as much as practicable.

6.5 Interconnection Agreements. Customer shall enter into the standard interconnection agreement(s) required by the Electric Utility in order to connect the System to the Electric Utility's grid. The interconnection agreements require Customer to provide and maintain property and commercial general liability insurance policies. Customer, at its sole cost and expense, shall provide and maintain such insurance policies throughout the Term.

7. COVENANTS AND OBLIGATIONS

7.1 Covenants of Producer. In order to induce Customer to enter into this Agreement, Producer covenants and agrees to the following:

(a) Approvals. Producer shall obtain, maintain, and comply with all government approvals, rules, and regulations required for the installation and performance of the System, including obtaining all necessary government permits.

(b) Liens. Producer shall not permit any lien to be filed or otherwise imposed on the System, or the Premises, except as is expressly provided herein. If Producer breaches its obligations under this Section, it shall immediately notify Customer in writing, and shall, at its sole cost and expense, promptly cause such lien to be discharged and released at no cost to Customer.

(c) Producer's Records. Producer shall keep complete and accurate records of its operations relevant to this Agreement for at least two (2) years. Customer shall have the right to inspect all such records at least once a year.

7.2 Covenants of Customer. In order to induce Producer to enter into this Agreement, Customer covenants and agrees to the following:

(a) Liens. Customer shall not permit any lien to be filed, created, incurred, or otherwise imposed on the System or any interest therein. If Customer breaches its obligations under this Section, it shall immediately notify Producer in writing, and shall, at its sole cost and expense, promptly cause such lien to be discharged and released at no cost to Producer.

(b) Structural Repairs. If Producer determines that the Premises requires certain repairs or upgrades prior to the installation of the System, Producer shall promptly notify Customer of such requirements. Customer, as its sole cost and expense, shall then make such repairs or upgrades to the Premises to the satisfaction of Producer. If Customer refuses or is unable to make the repairs or upgrades that Producer deems necessary, Producer may terminate this Agreement upon written notice to Customer. As of **March 25, 2020**, Producer is not aware of any structural repairs needed, nor are there any anticipated.

(c) Customer Records. Customer shall keep complete and accurate records of its operations relevant to this Agreement for at least two (2) years. Producer shall have the right to inspect all such records at least once a year.

(d) Security. Customer shall provide and take reasonable measures for the protection and security of the System.

(e) Notice of Damage. Customer shall promptly notify Producer of any known damage to the System.

(f) Maintenance of Interconnection. Customer shall cause the System to remain interconnected to Customer's electrical system during the entire Term, except as permitted under Outages and Force Majeure Events as provided herein.

(g) Solar Easement and Access. Customer shall not take any action on the roof space or anywhere on the Premises that would wholly or partially block sunlight from or to the System during the Term; provided, however, that Customer reserves the right to use parts of the roof for existing apparatus that may include, but are not limited to vents, hoods, elevator equipment, and existing air conditioning equipment.

8. INSURANCE; FORCE MAJEURE EVENTS

8.1 Insurance Requirements.

(a) Producer's Insurance. Producer shall, at its sole cost and expense, provide and maintain commercial general liability insurance with coverage in the amount of not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, endorsed to provide contractual liability in said amount, specifically covering Producer's obligations under this Agreement. Producer shall also maintain at all times during the

term of this Agreement workers' compensation insurance coverage in accordance with applicable federal and state law. The liability policy shall contain a clause that the insurer will not change or cancel the insurance without first giving Customer thirty (30) days prior written notice thereof. Producer shall provide to Customer certificates of insurance for all insurance policies required herein. Such insurance shall be primary coverage without right of contribution from any insurance of Customer. Producer shall also maintain the "all risk" property insurance covering the System (whether separately or part of the building) during the Term.

(b) Customer's Insurance. Customer shall, provide and maintain "all-risk" property insurance covering the System (whether separately or part of the building) during the Term, and naming Producer as the loss payee as to the System. The policy shall, if available contain a clause that the insurer will not change or cancel the insurance without first giving Producer thirty (30) days prior written notice thereof. Customer shall also, at its sole cost and expense, provide and maintain any and all insurance policies required by the Electric Utility under its standard interconnection agreement, including without limitations, commercial general liability insurance and property insurance. Customer shall provide to Producer certificates of insurance for all insurance policies required herein. Such insurance shall be primary coverage without right of contribution from any insurance of Producer.

Producer shall reimburse Customer the cost of the "all Risk" insurance attributable to the photovoltaic system.

(c) Waiver of Claims. The parties hereby waive and release any and all rights of action, including those of their respective insurers, for negligence against the other party, which may hereafter arise on account of damage to the Premises, resulting from any fire or other casualty of the kind covered by their respective property insurance policies.

8.2 Force Majeure Events. If either party is prevented from or delayed in performing any of its obligations under this Agreement by reason of a Force Majeure Event, such party shall notify the other party in writing as soon as practicable after the onset of such Force Majeure Event and shall be excused from the performance of its obligations under this Agreement and not be deemed a Producer Default or Customer Default, as the case may be. The party whose performance under this Agreement is prevented or delayed as the result of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform. In case a Force Majeure Event

continues for more than one year, then either party may terminate this Agreement without liability to the other.

9. TRANSFER OF THE PREMISES

If Customer, during the Term, sells or otherwise transfers all or any portion of the Premises, including without limitations, any transfer effectuated by bankruptcy proceedings by or against Customer, or by a foreclosure of Customer's interest in the Premises, Customer shall give Producer at least forty five (45) days prior written notice thereof, and agrees that the terms and conditions of this Agreement shall run with the property during the Term, and any party that acquires the Premises takes said Premises subject to this Agreement with all rights, and obligations appurtenant thereto.

10. REPRESENTATIONS AND WARRANTIES

10.1 Producer represents and warrants to Customer that:

(a) Notices or Approvals of Third Parties. There are no notices required to be made with, or approvals to be obtained from, any governmental authority or other person in connection with this Agreement, which could materially and adversely affect Producer's ability to perform its obligations hereunder.

(b) Litigation and Claims. There are no claims pending or threatened or asserted against Producer, which if adversely decided, would adversely affect or otherwise prohibit Producer from performing its obligations hereunder.

10.2 Customer represents and warrants to Producer that:

(a) Fee Simple. Customer's interest in the Premises is a fee simple ownership interest.

(b) Notice or Approvals of Third Parties. There are no notices required to be made with, or approvals to be obtained from, any governmental authority or other person in connection with this Agreement, which could materially and adversely affect Customer's ability to perform its obligations hereunder.

(c) Litigation and Claims. There are no claims pending or threatened or asserted against Customer, which if adversely decided, would adversely affect or otherwise prohibit Customer from performing its obligations hereunder.

11. INDEMNIFICATION

11.1 Indemnification by Customer. Except as provided in hereinabove, Customer shall indemnify, defend, and hold Producer harmless from and against (i) any claims arising out of Customer's breach of this Agreement and (ii) any claims made by third parties which are attributable to any breach or inaccuracy in the representations or warranties furnished by Customer, and upon notice from Producer, Customer shall promptly pay and fully satisfy any and all losses, judgments and expenses incurred or sustained by Producer as a result of Customer's breach.

11.2 Indemnification by Producer. Except as provided in hereinabove, Producer shall indemnify, defend, and hold Customer harmless from and against (i) any claims arising out of Producer's breach of this Agreement and (ii) any claims made by third parties which are attributable to any breach or inaccuracy in the representations or warranties furnished by Producer, and upon notice from Customer; (iii) any claim for or arising out of any injury or death of any person or loss or uninsured damage to property to the extent arising out of Producer's (or its contractor's) negligence or willful misconduct; (iv) Producer's violation of any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a governmental authority that is applicable to a party to this Agreement or the transaction described herein; any failure to properly interconnect or comply with the procedures of the Electric Utility; or (v) any failure to properly handle or dispose of any Hazardous Materials brought onto the Premises by Producer or by any of Producer's employees, agents, volunteers, and invitees, Producer shall promptly pay and fully satisfy any and all losses, judgments and expenses incurred or sustained by Customer as a result of Producer's breach.

11.3 Survival of Provisions. The foregoing indemnity obligations shall survive the expiration or termination of this Agreement.

12. DISPUTE RESOLUTION AND ARBITRATION

12.1 Arbitration. If a dispute should arise under this Agreement, then the issues involved shall be submitted to and resolved by arbitration. The parties agree jointly to use the services of Dispute Prevention & Resolution, Inc. and its commercial arbitration rules then in effect. Unless otherwise stated herein, the parties shall share the costs of the arbitration equally. The decision of the arbitrator shall be final and binding upon the

parties and may be enforced in any court of competent jurisdiction. The venue of the arbitration shall be Honolulu, Hawaii. Notwithstanding any provision herein to the contrary, Producer reserves the right to bring an action in any court of competent jurisdiction for delinquent payment of the Energy charges payable hereunder (including a determination of the amount of such Energy charges).

12.2 Good Faith. Each of the parties agrees to undertake its obligations under this Agreement in good faith. In addition, each party shall continue to perform its obligations under this Agreement during any dispute resolution process, including arbitration, and no amount payable, other than the amount in dispute, shall be withheld during the period of the dispute resolution.

13. CASUALTY; CONDEMNATION.

13.1 Casualty Affecting the Premises. If the whole or a substantial portion of the Premises on which the System is located is materially damaged or destroyed by fire or other casualty, then, subject to the terms hereof, Customer shall elect whether it will restore the Premises, which restoration will be at the sole expense of Customer. If Customer does not elect to restore the Premises, the Producer shall not restore the System and this Agreement will terminate. If Customer elects to restore the Premises, Producer shall then elect, within sixty (60) days of Producer's receipt of notification by Customer, whether or not to restore the System. If Producer does not elect to restore the System, this Agreement shall terminate. If Producer does elect to restore the System, it shall do so at its sole expense.

13.2 Taking of the Premises. If the whole or a substantial part of the Premises is lawfully condemned or taken in any manner such that Producer is prevented from operating the System (such determination to be made by Producer in its sole and absolute judgment), then Producer may terminate this Agreement, effective on the date of the taking of possession by the condemning authority. In the event of such taking, Customer shall be entitled to the condemnation award with respect to the Premises, and Producer shall be entitled to the portion of the condemnation award with respect to the System.

13.3 Casualty Affecting the System. If all or a substantial portion of the System is materially damaged or destroyed by fire or other casualty, then, subject to the terms hereof, Producer shall promptly repair the damage and/or restore System to such good condition as existed before the destruction or damage. During such repair and/or restoration, Producer shall operate the System pursuant to the Agreement, to the extent practicable and consistent with safety considerations. If such reconstruction or repair is

not completed within twelve (12) months from the date of such damage or destruction, then Customer may terminate this Agreement, and both the Customer and Producer shall have no further liability to each other as a result of such termination.

13.4 Taking of the System. If the whole or a substantial part of System is lawfully condemned or taken in any manner, this Agreement shall forthwith cease and terminate on the date of the taking of possession by the condemning authority. In the event of such taking, Customer shall be entitled to the condemnation award with respect to the Premises, and Producer shall be entitled to the portion of the condemnation award with respect to the System.

14. LICENSE TO USE THE PREMISES

14.1 License to Use the Premises. Customer hereby grants a license to Producer to use (i) the entire area of the roof of the Premises, save and except as to the roof areas covered by existing vents, hoods, air conditioning equipment and other existing apparatus, if any, for the installation, operation, maintenance, repair and replacement of the System, (ii) all electrical lines and conducts required to transmit the Energy generated by the System to the Delivery Point and/or the Electric Utility's grid, (iii) such additional space at the Premises for the installation, operation, inspection, repair, maintenance, and/or improvement of electric lines, cables, conduits, inverters, and other System equipment, and (iv) the non-exclusive right of ingress and egress from a public right-of way, at reasonable times and upon reasonable notice, to the Premises for the purpose of installation, operation, inspection, maintenance, repair and/or improvement of the System and any part thereof. Notwithstanding anything contained herein to the contrary, the use of any area of the Premises outside of the roof area shall be subject to the approval of Customer and shall be at locations that minimize any disruption to Customer's activities occurring on the Premises.

14.2 Internet Connection. Customer shall provide and allow Producer to connect to Customer's designated connection point. Customer shall provide functional internet service for the duration of the agreement.

14.3 Delivery of the Premises. Customer shall deliver the Premises to Producer on the Effective Date in a condition ready for Producer's installation of the System, clean and free of debris.

14.4 Quiet Enjoyment. Customer covenants that Producer shall peacefully and quietly have, hold and enjoy the licensed area during the Term.

14.5 Damage to the Premises.

(a) In the event that the System directly causes damage to the Premises, including any roof leaks caused by the System penetrating into a structure, Customer and Producer shall each notify the other as soon as possible following the discovery of such damage.

(b) Producer, at its sole cost and expense, shall commence repairs to the Premises as soon as reasonably possible after receiving such notice from Customer, or upon its own discovery of such damage directly caused by the System.

(c) Any damage that is not directly caused by the System or its repair shall be presumed to be a pre-existing condition of the Premises, and Producer shall have no obligation to pay for or otherwise repair such damage.

15. **DEFAULT; REMEDIES**

15.1 Customer Default. The following events shall constitute a "Customer Default":

(a) Failure to Pay. The failure of Customer to pay during the Term any amounts owing to Producer when such amounts are due and payable under the terms of this Agreement; provided that Customer shall have the right to cure such default upon notice from Producer by paying the amounts owing plus interest within ten (10) days after such notice.

(b) Failure to Perform Other Obligations. Unless due to a Force Majeure Event, the failure of Customer to perform any other obligation under this Agreement, or the breach of any representation and warranty set forth herein; provided, however, that if such failure can be cured, then Customer shall have thirty (30) days after receipt of written notice to cure the such default. Producer shall be entitled to reasonably estimate the amount of Energy that would have been produced and Customer shall pay Producer for such Energy.

(c) Bankruptcy. Any of the following events shall constitute a Customer Default: (i) Customer files a petition seeking reorganization and/or relief under the federal bankruptcy laws; (ii) Customer is subject to an involuntary bankruptcy petition, and such petition is not dismissed within ninety (90) days after the filing thereof;

and/or (iii) Customer loses possession and/or control of substantially all of its assets, including the Premises, by way of a receivership, foreclosure, or other operation of law.

15.2 Producer Default. The following event shall constitute a "Producer Default":

(a) Failure to Perform Obligations. Unless due to a Force Majeure Event, the failure of Producer to perform any obligation under this Agreement or the breach of any representation and warranty set forth herein; provided, however, that if such failure by its nature can be cured, then Producer shall have thirty (30) days after receipt of written notice to cure such default.

(b) Bankruptcy. Any of the following events shall constitute a Producer Default: (i) Producer files a petition seeking reorganization and/or relief under the federal bankruptcy laws; (ii) Producer is subject to an involuntary bankruptcy petition, and such petition is not dismissed within ninety (90) days after the filing thereof; and/or (iii) Producer loses possession and/or control of substantially all of its assets, including the System, by way of a receivership, foreclosure, or other operation of law.

15.3 Remedies Following Default.

(a) Customer's Remedies Upon Occurrence of a Producer Default.

(i) Termination. If any Producer Default occurs, and Producer or Producer's lender fails to cure such Producer Default within the time prescribed herein, then Customer may terminate this Agreement and be discharged of any further obligations.

(ii) Removal of the System. Upon Customer's termination of this Agreement, Producer shall forthwith remove the System from the Premises at Producer's sole cost and expense. **If a roof is utilized, Customer understands and agrees that the bolts embedded have a waterproof flashing and if removed, the waterproofing will be compromised.** Producer shall not be responsible for the waterproofing being compromised and therefore these bolts and strut bases should be left in place.

(b) Producer's Remedies Upon Customer Default. If a Customer Default occurs and Customer or Customer's lender fails to cure such default within the time prescribed herein, then Producer may terminate this Agreement and be discharged of any further obligations; provided, however, that Customer shall be liable to pay Producer the Termination Value.

15.4 No Consequential Damages. Nothing in this Agreement is intended to cause either party to be liable to the other party for any lost business, lost profits or revenues from others or other special or consequential damages, all claims for which are hereby irrevocably waived by Customer and by Producer.

15.5 Effect of Termination of Agreement. Upon the expiration of this Agreement or sooner termination, as the case may be, any amounts then owing by a party to the other party shall become immediately due and payable, and all future obligations of Customer and Producer under this Agreement shall be terminated (other than the indemnity obligations set forth herein). Any such expiration or termination shall not relieve either party from any obligations that may have accrued prior to the effective date of such expiration or termination.

16. GENERAL PROVISIONS

16.1 Notices. All notices given or required (except those in emergency situations) shall be in writing and must be served by certified or registered mail, postage prepaid and addressed to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other party):

If to Customer: The Collection
600 Ala Moana Boulevard
Honolulu, HI 96813

If to Producer: Energy Storage Hawaii LLC
c/o 1103 Prospect Street
Honolulu, Hawaii 96822
Tel: (808) 864-4817
E-mail: wendellchoy@gmail.com

16.2 Entire Agreement. This Agreement represents the full and complete agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior written or oral Agreements between said parties with respect to said subject matter.

16.3 Non Waiver. The waiver by either Producer or Customer of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such

term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payment by the non-defaulting party hereunder shall not be deemed to be a waiver of any preceding breach by the defaulting party of any term, covenant or condition of this Agreement, other than the failure of said defaulting party to pay the particular amounts owing so accepted, regardless of the non-defaulting party's knowledge of such preceding breach at the time of acceptance of such payment. No covenant, term or condition of this Agreement shall be deemed to have been waived by a non-defaulting party, unless such waiver is in writing signed by the non-defaulting party.

16.4 Assignment. Except as expressly provided herein, neither party shall assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other party; provided, however, that Producer may, without the consent of Customer, assign any of its rights, duties or obligations under this Agreement to (i) an affiliate, (ii) one or more third parties in connection with a sale-and-leaseback or other financing transaction, (iii) any person or entity succeeding to all or substantially all of the assets of Producer, or (iv) a successor entity in a merger or acquisition transaction. Producer shall provide written notice to Customer of the occurrence of any such permitted transfer.

16.5 Subordination; Non-Disturbance Agreement. This Agreement and all rights of Producer under this Agreement will be subject and subordinate to the lien of any mortgage or other security document now or hereafter affecting the Premises; provided, however, that any such subordination is expressly conditioned upon Customer obtaining the agreement of any lender holding such Mortgage (the "Mortgagee") that as long as Producer is not in default in the performance and observance of any covenant, condition, term or provision of this Agreement beyond any applicable grace or cure period, Mortgagee will not disturb Producer's rights under this Agreement, which subordination and non-disturbance agreement shall otherwise be in form and substance reasonably satisfactory to Producer and shall be recorded in the Bureau of Conveyances of the State of Hawaii or the Office of the Assistant Registrar of the Land Court of the State of Hawaii. The lien of any such Mortgage shall not cover or encumber the System, any System related equipment or Producer's moveable trade fixtures or other personal property of Producer located in or on the Premises.

16.6 Severability. If any provision of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal or unenforceable by reason of the operation of applicable law, such determination shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement, and shall

not render this Agreement unenforceable or invalid as a whole. Such provision shall either be deleted or amended and the remainder of this Agreement shall remain in full force and effect.

16.7 Attorneys' Fees. If any dispute arises under this Agreement, the substantially prevailing party shall be entitled to recover its reasonable attorneys' fees and arbitration and/or court costs incurred in resolving or settling the dispute, in addition to any and all other damages or relief which a court or arbitrator may deem proper except as otherwise provided herein with respect to Consequential Damages.

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

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

16.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Hawaii.

16.11 No Third Party Rights. This Agreement is only for the benefit of the parties, and their respective successors and permitted assigns. No other person, including without limitations, the Electric Utility, shall be entitled to rely on any matter set forth in, or shall have any rights on account of the performance or non-performance by any party of its obligations under this Agreement.

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

16.13 Recordation of a Short Form Agreement. Customer consents to and hereby appoints Producer as its attorney-in-fact for the purpose of recording a memorandum or short form of this Agreement (which shall include a general description of the System) in the Bureau of Conveyances of the State of Hawaii and/or the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

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

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

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

Energy Storage Hawaii LLC
and/or Designee

By: _____
Name: WENDELL CHOY
Its: Member

"Producer"

ASSOCIATION OF APARTMENT
OWNERS THE COLLECTION

By: _____
Name: _____
Its: _____

"Customer"